



GOVERNOR OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
GOVERNOR

P.O. Box 720
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June 11, 2014

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 entitled:

AN ACT

To repeal sections 136.300, 142.815, 143.221, 143.451, 144.010, 144.018, 144.020, 144.030, 144.044, 144.080, 144.190, and 221.407, RSMo, and to enact in lieu thereof fifteen new sections relating to taxation, with an existing penalty provision.

I disapprove of Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584. My reasons for disapproval are as follows:

Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 would continue a damaging trend by the General Assembly to enact special tax exemptions and credits that pick winners and losers through the tax code and shift a greater proportion of the tax burden to the majority of Missourians unable to utilize such loopholes. Not a penny of the special breaks in this bill or in the others that I am vetoing today¹ was taken into account in the Fiscal Year 2015 budget passed by the General Assembly, leaving it significantly out of balance and requiring swift action to protect the state's fiscal well-being. This is fiscally irresponsible and cannot receive my support.

In enacting Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 and its brethren in the final hours of the legislative session, the General Assembly

¹ Conference Committee Substitute for Senate Committee Substitute for Senate Bill No. 612; Conference Committee Substitute for House Committee Substitute for Senate Bill No. 662; Conference Committee Substitute No. 2 for House Committee Substitute for Senate Bill No. 693; House Committee Substitute for Senate Bill No. 727; Senate Committee Substitute for Senate Bill No. 829; Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Bill No. 860; Senate Committee Substitute for House Committee Substitute for House Bill No. 1296; House Bill No. 1455; and Senate Substitute for Senate Committee Substitute for House Bill No. 1865.

disregarded the normal legislative process, slipping in costly provisions without public hearings and without fiscal notes reflecting the impact on the state budget. And just as legislators ignored the legislative process, so too did they disregard the budget process by passing a budget just a week earlier that failed to account for this final day spending spree. Unlike the fiscal impact of Senate Substitute No. 3 for Senate Committee Substitute for Senate Bill Nos. 509 & 496, which today's lawmakers have conveniently foisted off on future budgets for education, public safety and other vital public services, the fiscal impact of the special breaks I am vetoing today would begin impacting budgets in the fiscal year starting in less than 30 days. There are no delays, triggers, or other gimmicks that could be touted as shielding education, public safety, and other vital public services, at both the state and local level,² from the projected \$776 million in state and local revenue legislators voted to send to narrow special interests on the last day of session. While the General Assembly may have abdicated its fiscal responsibilities in failing to account for this budgetary impact, the resulting imbalance cannot be ignored and will have to be corrected through dramatic spending reductions.

Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 and the other measures I am vetoing today would add to the more than 260 sales tax exemptions and tax credits that litter Missouri's tax code without requiring the creation of a single new job. The continued erosion of the tax base through such individualized exemptions and credits violates well-established principles of sound tax policy calling for a broad tax base so that tax rates can remain low. The General Assembly has ignored repeated calls to reduce these costly and inefficient carve-outs and has instead rushed through many more, leaving Missouri families to pick up the tab for education and other vital public services.

² In addition to impacting the general local sales tax imposed under Section 32.085, exemptions from local sales tax would reduce revenue collected through numerous voter-approved local sales taxes that are targeted to specific, community supported needs. Examples include the County Anti-Drug Sales Tax, Sections 67.391, 67.392, RSMo; County Construction Sales Tax, Sections 67.550, 67.590, RSMo; Museums and Festivals Sales Tax, Sections 67.571, 67.578, RSMo; Law Enforcement Services Sales Tax, Sections 67.582, 67.584, 92.500, RSMo; Capital Improvements Sales Tax, Sections 67.700, 67.730, 94.577, 94.578, 94.890, RSMo; Storm Water Control and Public Works Sales Tax, Sections 67.701, 67.729, 94.413, RSMo; Public Recreation Projects and Programs Sales Tax, Sections 67.745, 67.782, RSMo; Regional Recreation Districts Sales Tax, Section 67.799, RSMo; Perry County Senior Services and Youth Programs Sales Tax, Section 67.997, RSMo; Economic Development Sales Tax, Sections 67.1300, 67.1303, 67.1305, 94.1008, 94.1010, 94.1012, RSMo; Community Improvement Districts Sales Tax, Section 67.1545, RSMo; Metropolitan Parks and Recreation Districts Sales Tax, Section 67.1712, RSMo; Children's Services Sales Tax, Section 67.1775, RSMo; Water Quality, Tourism, and Infrastructure Sales Tax, Section 67.1922, RSMo; Tourism Community Enhancement Districts Sales Tax, Section 67.1959, RSMo; Exhibition Center and Recreational Facility Districts Sales Tax, Section 67.2000, RSMo; Tourism Promotion Sales Tax, Section 67.2030, RSMo; Construction of Women's and Children's Shelter Sales Tax, Section 67.2040, RSMo; Theater, Cultural Arts, and Entertainment Districts Sales Tax, Section 67.2530, RSMo; Parks, Trails, and Greenways Districts Sales Tax, Section 67.5012, RSMo; Mass Transit Sales Tax, Section 92.402, RSMo; Public Safety Sales Tax, Sections 94.579, 94.581, 94.900, 94.902, RSMo; Community Center Sales Tax, Section 94.585, RSMo; Transportation Sales Tax, Sections 94.605, 94.660, 94.705, RSMo; Historical Locations and Museums Sales Tax, Section 94.950, RSMo; Medical Care for the Medically Indigent Sales Tax, Section 94.1000, RSMo; Kansas City Zoological District Sales Tax, Sections 94.1000, 184.503, RSMo; Transportation Development District Sales Tax, Section 238.235, RSMo; County Transit Authority Sales Tax, Section 238.410, RSMo; and Storm Water Control and Parks Sales Tax, Section 644.032, RSMo.

The unabated growth of such special carve-outs and the fiscal irresponsibility of failing to budget for them are all the more troubling when the General Assembly is simultaneously seeking to raise taxes on all Missourians with what could be the largest tax hike in Missouri history. While the benefits of the more than one billion dollars in annual tax breaks passed by the legislature over the past two months will go disproportionately to the wealthy, the burden of this multi-billion dollar tax increase for transportation would fall disproportionately on Missouri's working families and seniors.

The special breaks in Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 and the other bills that I am vetoing today are not the mere clarifications that their supporters claim. Instead, they seek to overrule no fewer than twenty Missouri Supreme Court decisions going back to 1977 that have been followed by the department of revenue over the course of previous and current administrations. In nearly every one of the cases sought to be overturned, the court ruled that the law enacted by the General Assembly required a tax to be collected, notwithstanding that a particular business had hoped to be excused from the legal obligations we all share. While it is well within the rights of a losing litigant to petition their elected representatives, it is wholly disingenuous to call doing so here anything other than what it is—seeking a special exemption from the law, as currently written and as confirmed by the courts.

Throughout my time as Governor, I have worked with legislators on fiscally responsible ways to improve our tax code while protecting our state's fiscal health, including the four tax cuts that I have signed into law. Even during this legislative session, I worked directly with legislators to put forward a specific, concrete proposal that would have lowered taxes for Missourians and reined in costly and inefficient tax credits for special interests, broadened the overall tax base and reduced tax rates, while protecting our ability to invest in education and other vital public services. Unfortunately, the General Assembly refused to enact this broad tax relief in favor of narrow giveaways like those contained in Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 and the other bills I am vetoing today. For the reasons stated herein, this is an endeavor I cannot support.

Special Exemptions for the Storage and Processing of Data in Any Form

Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 would exempt from state and local sales tax electrical energy, machinery, equipment, parts and materials used or consumed in connection with or to facilitate the storage or processing of data in any form in a facility or a part of a facility. These exceedingly broad and completely new state and local sales tax exemptions are not the thoroughly vetted, widely-supported, revenue-neutral incentive for new and expanding data centers that has been introduced in the General Assembly for the past several years.

Although this provision is projected to reduce state and local revenues by an estimated \$300 million annually, because it was slipped into the bill in the final hours of the legislative session without a public hearing and without a fiscal note reflecting its cost, it is unlikely legislators were aware of this significant fiscal impact when they voted to enact it. And as with the other new exemptions enacted in Conference Committee Substitute for House Committee Substitute

for Senate Bill No. 584 and the other bills I am vetoing today, the General Assembly failed to account for the resulting reduction in state revenue in the budget they enacted for the fiscal year starting July 1, necessitating spending cuts in order to maintain a balanced a budget.

These new exemptions in Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 have been characterized by some as applying only to “data centers.” However, such is not the case. The legislation itself does not use the term “data center.” Instead, the language is far broader, applying to “any facility or part of a facility that is used primarily for such data storage or processing,” which means that any business with a computer could attempt to claim these broad new exemptions. The term “data storage” is undefined, and the term “processing” is broadly defined to encompass “any action or process performed upon or using data in any form.” As this definition indicates, it is not merely electronic or other forms of “high tech” data that would be subject to these new exemptions, but rather data “in any form,” whether stored in a computer or in a file cabinet.

This broad subsidy stands in stark contrast to legislation that I have supported in the past to provide a revenue-neutral incentive for new and expanding data centers that create new jobs and make new capital investments.³ Such legislation has been introduced in the Missouri General Assembly for the past several years and has been thoroughly debated and vetted through the legislative process. *See, e.g.* Senate Bill No. 8 (1st Ex. Session 2011); Senate Bill No. 584 (2012); House Bill No. 1311 (2012); Senate Bill No. 46 (2013); Senate Bill No. 394 (2013); House Bill No. 222 (2013); Senate Bill No. 633 (2014); Senate Bill No. 1502 (2014). Indeed, during the past legislative session there was a public hearing on House Bill No. 1444 (2014), which would have enacted this fiscally responsible data center incentive.

Unfortunately, that is not what was inserted into Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 in the final hours of the legislative session. Inserted instead was a broad government subsidy without any of the taxpayer protections present in previous legislation and without any requirement to create even a single new job. Specifically, previous data center legislation contained the following protections, none of which is present here:

- **Job creation** – Required a minimum number of jobs paying at least the county average wage to be created in order for a new or expanding data center to obtain the exemption;
- **Capital investment** – Required a minimum amount of new capital investment in order for a new or expanding data center to obtain the exemption;

³ Even without a specific data center incentive, Missouri has been successful in recruiting and growing such operations in the state. For example, in April I was pleased to announce the opening of a mission critical data center for a premier cloud computing company in the underground business complex in Northeast Kansas City owned and operated by Hunt Midwest, which will result in the creation of 21 new jobs and \$58 million in new capital investment. With the continued growth of high-tech companies like these, it is no wonder that Missouri was the fastest-growing state for technology employment in 2013, even without a dedicated data center incentive.

- **Revenue neutral** – Limited the amount of the sales tax exemption to the amount that would result in a positive general revenue return to the state, thereby ensuring that the exemption would be revenue neutral;
- **New and expanding data centers only** – Limited the availability of the sales tax exemption to solely new or expanding data centers, as defined by NAICS classification, to provide an incentive for such facilities to locate or expand in Missouri, not merely a subsidy for all facilities, regardless of whether they are already operating in Missouri; and
- **Rigorous oversight** – Previous data center legislation required random audits of recipients to ensure that the recipient was actually eligible for the exemption.

In addition to failing to include any of the above taxpayer protections found in previous data center legislation, these broad new exemptions would play favorites with the tax code by providing more generous tax benefits for data storage and processing than is currently available to numerous other types of businesses. First, while the current sales tax exemptions for manufacturers in Section 144.054, RSMo, only apply to state sales taxes, this bill would exempt the same type of purchases for data storage and processing activities from local sales taxes as well. Second, while the current manufacturing sales tax exemptions require the tax-exempt items to be actually used in the manufacturing process, these new exemptions for data storage and processing would apply even if the items are used simply “in connection with” or “to facilitate” the storage and processing of data. This could result in purchases only very loosely connected, if at all, to the actual storage and processing of data being claimed as tax-exempt. Offering these broad new exemptions from state and local tax would treat those who manipulate data better than those who manufacture goods, without a clearly articulated economic justification for doing so, without requiring the creation of a single new job, and without accounting for the impact on state and local budgets. Accordingly, this provision does not receive my support.

Special Exemption for Power Companies

Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 would also provide a special carve-out from state and local taxes for purchases of a variety of items used in the generation, transmission, distribution, sale or furnishing of electricity by power companies. This provision is written so broadly that these entities could avoid paying any sales and use tax whatsoever, although there is nothing in the bill that would require them to create any new jobs or to pass the savings along to consumers in the form of reduced electricity rates. These new exemptions would abrogate a 2001 Missouri Supreme Court case, which held that the law enacted by the General Assembly did not authorize such tax exemptions for power companies. *See Utilicorp United, Inc. v. Director of Revenue*, 75 S.W.3d 725 (Mo. banc 2001) (machinery and equipment used in transmission of electricity not exempt under Section 144.030, RSMo).

Like other tailor-made exemptions in Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584, these new tax exemptions for power companies were inserted during the final hours of the legislative session without a public hearing in any Senate

committee. Although not included in any fiscal note for Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584, this provision could reduce state revenue by more than \$30 million annually, none of which was accounted for by the legislature in the budget they enacted just a week earlier.

Furthermore, there is nothing in this provision to prevent the power companies from claiming exemptions from local sales taxes on top of their exemptions from state taxes, which would result in an additional \$30 million annual impact to local revenues. Following its passage, proponents have suggested a narrow interpretation⁴ of the provision to apply only to state taxes because the language is silent as to whether local taxes are also exempted. However, in order to exempt state sales tax and not also exempt the local tax, the legislature must expressly make the exemption inapplicable to local sales tax, as it did in the only current exemption from the state sales taxes that does not also apply to the local sales tax. *See* Section 155.054.2, RSMo (“The exemptions granted in this subsection shall not apply to local sales taxes as defined in section 32.085 . . .”). It is necessary to expressly exclude the local sales tax because Section 32.087, RSMo, incorporates all state sales tax exemptions to the local sales tax.⁵ The General Assembly acknowledged this in Senate Substitute for Senate Committee Substitute for House Bill No. 1865, which I am also vetoing today, and which sought to provide state-only tax exemptions for certain purchases by fast food restaurants, convenience stores, and grocery stores, by expressly stating that the exemptions do not apply to the local sales tax. *See* Section 144.055.3 (“The exemptions granted in this section shall not apply to the local sales tax law as defined in section 32.085”). Mere silence as to whether a state sales tax exemption applies to the local sales tax is insufficient to exempt local taxes, as indicated by other state and local sales tax exemptions that only expressly reference an exemption from the state tax. *See, e.g.,* Section 144.030.1, RSMo; Section 144.062, RSMo. Accordingly, there is nothing in the bill to prevent the power companies from one day seeking a refund of local taxes paid after the effective date of the law, significantly impacting the budgets of local communities.

⁴ There is some irony in urging a narrow interpretation of the new exemptions provided by this bill when in the Missouri Supreme Court case sought to be abrogated the power company argued for an expansive interpretation of the tax exemptions at issue. *See Utilicorp United, Inc.*, 75 S.W.3d at 725-30.

⁵ Section 32.087.8, RSMo, provides:

“All exemptions granted to agencies of government, organizations, persons and to the sale of certain articles and items of tangible personal property and taxable services under the provisions of sections 144.010 to 144.525, as these sections now read and as they may hereafter be amended, it being the intent of this general assembly to ensure that the same sales tax exemptions granted from the state sales tax law also be granted under the local sales tax law, are hereby made applicable to the imposition and collection of all local sales taxes imposed under the local sales tax law.”

See also *President Casino, Inc. v. Director of Revenue*, 219 S.W.3d 235, 241-42 (Mo. banc 2007) (highlighting Section 32.087.8 as an example of where, “[t]he legislature has specifically and directly incorporated sales tax exemptions into a number of other tax statutes. . .”). Notably the 97th General Assembly reenacted Section 32.087.8 last year in Senate Bill 99 (2013), Senate Bill 23 (2013), and House Bill 184 (2013), and each time continued the reference to all state sales tax exemptions applying equally to the local tax.

Special Exemptions for Certain Recreation Activities

Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 contains a provision that its proponents contend would simply clarify the current sales tax on fitness activities. Instead, this provision seeks to overturn more than a dozen Missouri Supreme Court cases going back to 1977 followed by the department of revenue over the course of previous and current administrations by fundamentally transforming the current sales tax on “amusement, entertainment, and recreation” into a tax solely on tickets and fees for admission.⁶ Such a dramatic change in the law would make far more than just gym memberships and yoga classes tax free. It would also exempt fees paid at bowling alleys, golf courses, pool halls, country clubs, and arcades, as well as encouraging any business that currently charges an admission fee to convert it into a newly tax-exempt fee for a specific activity. Enacting this sweeping new exemption would further erode the tax base without requiring the creation of even a single new job, in addition to reducing state and local revenue for education, public safety and other vital public services by more than \$70 million annually. The Fiscal Year 2015 budget passed by the General Assembly fails to account for the cost of these new carve-outs, putting the budget out of balance and necessitating spending reductions in order to balance it.

Tax Refunds to Delinquent Taxpayers

Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 would modify the established process for obtaining a sales tax refund by allowing a refund even if a taxpayer currently has overdue taxes. This provision is projected to reduce state and local revenue by up to \$10 million annually, although the General Assembly failed to account for any of this fiscal impact in the Fiscal Year 2015 budget they passed. As with many of the tax measures passed by the legislature on the last day of session, this provision was not the subject of a public hearing in any Senate committee.

⁶ The cases abrogated or called into question by this provision include: *Michael Jaudes Fitness Edge, Inc. v. Director of Revenue*, 248 S.W.3d 606 (Mo. banc 2008) (fees paid for personal training subject to tax as fees paid in or to a place of amusement); *Surrey's on the Plaza, Inc. v. Director of Revenue*, 128 S.W.3d 508 (Mo. banc 2004) (operation of horse-drawn carriage tours was place of amusement for sales tax purposes); *Eighty Hundred Clayton Corp. v. Director of Revenue*, 111 S.W.3d 409 (Mo. banc 2003) (fees paid for bowling shoe rental subject to tax when paid in or to a place of amusement); *Wilson's Total Fitness Center, Inc. v. Director of Revenue*, 38 S.W.3d 424 (Mo. banc 2001) (athletic and fitness clubs are places of amusement for sales tax purposes); *Kanakuk-Kanakomo Kamps, Inc. v. Director of Revenue*, 8 S.W.3d 94 (Mo. banc 1999) (summer camps are place of amusement for sales tax purposes); *Old Warson Country Club v. Director of Revenue*, 933 S.W.2d 400 (Mo. banc 1996) (country club is a place of amusement for sales tax purposes); *High Adventure Game Ranch, Inc. v. Director of Revenue*, 824 S.W.2d 905 (Mo. banc 1992) (wild game ranch is a place of amusement for sales tax purposes); *Bally's LeMan's Family Fun Centers, Inc. v. Director of Revenue*, 745 S.W.2d 683 (Mo. banc 1988) (video arcade is a place of amusement for sales tax purposes); *Spudich v. Director of Revenue*, 745 S.W.2d 677 (Mo. banc 1988) (billiards parlor is a place of amusement for sales tax purposes); *Lynn v. Director of Revenue*, 689 S.W.2d 45 (Mo. banc 1985) (nautical excursion vessel is a place of amusement for sales tax purposes); *Fostaire Harbor, Inc. v. Director of Revenue*, 679 S.W.2d 272 (Mo. banc 1984) (helicopter tours are a place of amusement for sales tax purposes); *City of Springfield v. Director of Revenue*, 659 S.W.2d 782 (Mo. banc 1983) (city recreational facilities are a place of amusement for sales tax purposes); *St. Louis Country Club v. Administrative Hearing Com'n of Missouri*, 657 S.W.2d 614 (Mo. banc 1983) (private country clubs are a place of amusement for sales tax purposes); *Blue Springs Bowl v. Spradling*, 551 S.W.2d 596 (Mo. banc 1977) (commercial bowling establishment is a place of amusement for sales tax purposes).

This provision would enable a business with significant tax delinquencies to get a tax refund for an unrelated overpayment of tax, where under current law the refund could be offset by the amount of tax delinquency. For example, under this provision even a business that owes \$100,000 in back taxes would be able to get a refund check from the state for a \$100,000 unintentional overpayment, so long as the \$100,000 tax delinquency is subject to appeal. Under current law, the \$100,000 refund would be offset by the entire \$100,000 tax delinquency, thereby eliminating the need to later engage in costly and inefficient collection efforts to recover the \$100,000 in overdue taxes. Such a change to the established refund process would unfairly reward those who fail to pay their taxes and would result in costly inefficiencies borne by all law-abiding taxpayers. Accordingly, this provision does not receive my support.

Corporate Income Allocation

Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 would enable additional businesses to reduce their corporate income taxes by utilizing an alternative method of calculating the amount of their income that is derived in Missouri. Legislation enacted last year authorized this alternative allocation method for manufacturers and other businesses selling tangible personal property. This provision would expand this alternative method to sellers of intangible personal property and service providers such as law firms, accounting firms, stock brokers, bond traders, real estate holding companies, and consultants.

Like many of the tax measures enacted during the final hours of the legislative session, this provision was never the subject of a public hearing and was not accounted for in the Fiscal Year 2015 budget passed by the General Assembly. A change to Missouri's tax policy that would reduce state revenues by up to \$15 million annually according to the legislature's own estimate should be the subject of open debate, and the foregone revenue must be accounted for in the budget in order to receive my support.

Proving Eligibility for Tax Exemptions

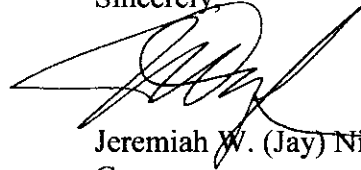
Not only would Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 create broad new tax exemptions, it would also excuse a business trying to claim these or any of the other 200 sales tax exemptions in current law from having to prove that it is actually eligible for the claimed exemption.

While I support eliminating the arbitrary limitation in current law that puts the burden of proof on some businesses but not others in determining tax liability, when it comes to someone trying to claim a tax exemption, they should at a minimum be required to show that they are entitled to it. Claiming a special carve-out or loophole without evidence to support it is unfair to the vast majority of Missouri taxpayers who lack the influence to get special tax exemptions crafted for them by the General Assembly. With the help of the legislature and the best accounting and legal advice, those fortunate enough to take advantage of special exemptions would now be given every incentive to push the outer boundaries of any exemptions that could conceivably apply, further eroding the tax base and shifting an even greater tax burden to the majority of taxpayers. Not content with merely showering the fortunate with a cavalcade of new tax breaks,

the General Assembly has gone further to stack the deck in their favor by providing an added incentive to try on an exemption just to see if it fits. This is not a tax policy that I can support.

In accordance with the above-stated reasons for disapproval, I am returning Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584 without my approval.

Sincerely

A handwritten signature in black ink, appearing to read "Jay Nixon", with a large, sweeping flourish extending to the left.

Jeremiah W. (Jay) Nixon
Governor