

## **Model Ordinance after the Street v. Director of Revenue Decision and SS for HB 184 Local Use Tax and Options on Out of State Vehicle Purchases**

The Missouri Municipal League has previously published a model ordinance for adopting a local use tax. The legal underpinning of that tax has changed due to the Missouri Supreme Court's decision in *Street v. Director of Revenue* 361 S.W.3d 355 (Mo. banc 2012) and the subsequent enactment of Senate Substitute for House Bill 184 (HB184). The Street case arose when Craig Street sought judicial relief after he was required to pay local sales taxes to license a boat, outboard motor, and trailer he purchased from a dealer in Maryland. In January of 2012 The Supreme Court of Missouri delivered an opinion in which it determined that the purchase was not subject to local sales tax because such taxes may only be imposed to the same extent as the state sales tax, which only applies to in-state purchases. Further, although a local use tax could potentially be imposed on the purchase, the county in which Street resided had not adopted a local use tax. The decision also implicated the state imposition of taxes on out of state sales of motor vehicles, trailers, boats, and outboard motors. The Missouri Legislature in 2013 reacted to the decision by passing HB184 effective August 29, 2013.

HB184 prohibited state and local use taxes on the sale of motor vehicles, trailers, boats, or outboard motors. The taxing of these items was placed on the sale of these items at the time of titling in Missouri, regardless of whether the item was purchased in this state. The residence of the purchaser was continued for the purpose of determining what local tax rate should apply. The rate of tax for motor vehicles, trailers, boats, or outboard motors sold at retail must be the sum of the state sales tax and the local sales tax. Additionally HB184 required all local taxing jurisdictions that have not previously approved a local use tax must put to a vote of the people whether to discontinue collecting sales tax on the sale of motor vehicles, trailers, boats, or outboard motors purchased out-of-state when titling in Missouri. If a taxing jurisdiction does not hold the vote before November 2016, the taxing jurisdiction must cease collecting the sales tax. A final requirement within HB184 creates a referendum action to repeal the tax at any time. Language repealing the tax must be put to a vote of the people any time 15% of the registered voters in a taxing jurisdiction sign a petition requesting it.

To assist municipalities in complying with the provisions of the statutes after passage of HB184 the following model ordinance with use and cautionary notes has been prepared.

MODEL ORDINANCE UNDER RSMo 32.087 (HB184)

This sample ordinance is to be considered only as a guide for local adoption.

See Notes on Use at the end of this sample.

Always have ordinances of this type reviewed by legal counsel.

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE PROVIDING FOR SUBMISSION OF A PROPOSAL TO DISCONTINUE APPLICATION AND COLLECTION OF THE LOCAL SALES TAX ON THE TITLING OF MOTOR VEHICLES, TRAILERS, BOATS, AND OUTBOARD MOTORS THAT WERE PURCHASED FROM A SOURCE OTHER THAN A LICENSED MISSOURI DEALER TO THE QUALIFIED VOTERS OF THE CITY FOR THEIR APPROVAL AT THE (SPECIAL) (GENERAL) (PRIMARY) ELECTION CALLED AND TO BE HELD IN THE CITY ON (DAY)\_\_\_\_, (DATE)\_\_\_\_, 20\_\_\_\_.

WHEREAS, the City has not previously approved and imposed a local use tax under Section 144.757 RSMo; and

WHEREAS, the City is required under the provisions of Section 32.087 RSMo to submit to the qualified voters of the City the question of repealing the application of the local sales tax to the titling of motor vehicles, trailers, boats, and outboard motors that were purchased from a source other than a licensed Missouri dealer; and

WHEREAS, the City is required to submit the question to its voters no later than the general election in November 2016;

NOW, THEREFORE, BE IT ORDAINED BY THE (CITY COUNCIL) (BOARD OF ALDERMEN) (BOARD OF TRUSTEES) OF \_\_\_\_ (CITY) \_\_\_\_, AS FOLLOWS:

Section 1. Pursuant to the provisions of Sections 32.087 RSMo, the (City Council) (Board of Aldermen) (Board of Trustees) has determined that it would be appropriate to submit the determination of the issue of whether to repeal application of the local sales tax to the titling of motor vehicles, trailers, boats, and outboard motors that are subject to state sales tax under section 144.020 and purchased from a source other than a licensed Missouri dealer to the voters.

Section 2. This proposition shall be submitted to the qualified voters of \_\_\_\_ (Municipality's Name) \_\_\_\_, Missouri, for their approval, as required by the provisions of Section 32.087 RSMo, at the election hereby called and to be held in the City on \_\_\_\_ (Day of Week) \_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The ballot of submission shall contain substantially the following language:

Shall the  (Municipality's Name)  discontinue applying and collecting the local sales tax on the titling of motor vehicles, trailers, boats, and outboard motors that were purchased from a source other than a licensed Missouri dealer?

Approval of this measure will result in a reduction of local revenue to provide for vital services for  (Municipality's Name)  and it will place Missouri dealers of motor vehicles, outboard motors, boats, and trailers at a competitive disadvantage to non-Missouri dealers of motor vehicles, outboard motors, boats, and trailers.

YES

NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

Section 3. If the ballot question set forth in Section (2) of this ordinance receives a majority of the votes cast in favor of the proposal, the local sales tax shall cease to apply to the titling of motor vehicles, trailers, boats, and outboard motors that were purchased from a source other than a licensed Missouri dealer. The effective date of the cessation shall be the first day of the second calendar quarter after the election. If a majority of the votes cast are opposed to the ballot question then the local sales tax shall continue to apply to the titling of motor vehicles, trailers, boats, and outboard motors that were purchased from a source other than a licensed Missouri dealer.

Section 4. Within ten (10) days after the approval or disapproval of the proposition by the qualified voters of  (Municipality) , Missouri, the City Clerk shall forward to the Director of Revenue of the State of Missouri by United States registered mail or certified mail, a certified 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. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

[Insert normal signature blocks]

## NOTES ON USE

Ordinances of this nature which have significant fiscal impact should be reviewed by an attorney on behalf of the municipality.

The model above is for use by municipalities which have not previously adopted a use tax. But can be modified by jurisdictions with a use tax who choose to submit the question or in municipalities receiving a referendum petition under the statute.

While RSMo 144.757 provides different language for municipalities not within St. Louis County, municipalities within St. Louis County and the City of St. Louis, RSMo 32.087 does not contain separate categories or wording.

The provisions of HB184 require cities which have not adopted a use tax prior to August 29, 2013 to either submit the question of repeal as provided in the ordinance to the voters, which may lead to repeal of the sales tax on the titling of motor vehicles, trailers, boats, and outboard motors that were purchased from a source other than a licensed Missouri dealer, or if the question is not submitted to the voters by November 2016, the local sales tax on those items ceases on March 1, 2017.

Any municipality with a previously adopted use tax may choose to submit the repeal of the local sales tax on the titling of motor vehicles, trailers, boats, and outboard motors that were purchased from a source other than a licensed Missouri dealer at any time, including after November 2016.

A referendum requirement is included in 32.087 RSMo which requires the question of repeal to be submitted to the voters after receipt of a petition signed by fifteen percent (15%) of the registered voters of the municipality voting in the last gubernatorial election.

Additional "Whereas" clauses may be added to give context to the ordinance such as the following:

WHEREAS, a fair and sound tax policy would require the same tax rate be charged on purchases made from businesses located outside Missouri as are charged by businesses in (Municipality Name) eliminating a competitive advantage of out-of-state businesses;

WHEREAS, maintaining a local sales tax will continue the policy of eliminating an advantage out-of-state dealerships currently enjoy over local dealerships;

WHEREAS, a petition to place the question of repeal has been received reflecting signatures of at least fifteen percent (15%) of the registered voters of the municipality voting in the last gubernatorial election;

Due to the somewhat unique method chosen by the legislature to address the issue of out of state purchases of motor vehicles, trailers, boats, and outboard motors, some uncertainty may exist as to the impact of a vote to repeal as contemplated in RSMo 32.087. The timing of the vote may

add to the uncertainty of liability under the Hancock Amendment. For those municipalities within St. Louis county an analysis of the impact on the special pool tax arrangement should be considered.

Any deviations from the statutory language in the ballot question may put the validity of the tax at risk. Reliance on the word “substantially” to alter language should be done only after consulting with an attorney. The Supreme Court has construed The term ‘substantially’ in the context of use in a taxation statute has been construed as synonymous with the following words: ‘practically,’ ‘nearly,’ ‘almost,’ ‘essentially’ and ‘virtually.’ Statements appearing elsewhere in the ordinance carry less risk.

The classification of a municipality may have an impact on the flexibility it has to alter statutorily designated language.

Issues common to tax issue ballot questions include the following:

Statutory class cities are creatures of the General Assembly, possessing only those powers expressly granted to them by statute, those powers necessarily or fairly implied in or incidental to their express powers, and those powers essential to the declared objects of the municipality. Reasonable doubt as to whether a power has been delegated to a municipality is resolved in favor of non-delegation.

The Missouri Supreme Court has stated that where statutes provide that ballots be in a certain form without prescribing what results would follow if they were not used as required, the statutes would be considered directory rather than mandatory. The test as set out is “whether or not the voters were afforded an opportunity to express and that they did fairly express their will.” State ex rel. City of Memphis v. Hackman, 202 S.W. 7, 14 (Mo Banc 1918); Ginger v. Halferty, 193 S.W.2d 503, 505 (Mo. 1946); City of Raytown v. Kemp, 349 S.W.2d 363, 369 (Mo. banc 1961).