



GOVERNOR OF MISSOURI

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TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you Senate Substitute for House Committee Substitute for House Bill No. 1329 entitled:

AN ACT

To repeal sections 32.087, 144.069, 144.757, and 301.140, RSMo, and to enact in lieu thereof five new sections relating to the regulation of motor vehicles, with an emergency clause and a contingent effective date for a certain section.

I disapprove of Senate Substitute for House Committee Substitute for House Bill No. 1329. My reasons for disapproval are as follows:

Senate Substitute for House Committee Substitute for House Bill No. 1329 seeks to impose a local tax on the out-of-state purchase of motor vehicles, boats, trailers and outboard motors (collectively "vehicles"). But it does so without a vote of the people and for that reason earns my disapproval.

I. *Street Decision*

Senate Substitute for House Committee Substitute for House Bill No. 1329 is intended to overrule the recent Missouri Supreme Court decision in *Street v. Director of Revenue*. In that case, the Court confirmed that vehicles purchased outside of Missouri, and registered here, are subject to the State and local use tax, and not the State and local sales tax. The two are easily distinguished – a sales tax is imposed upon retailers, on in-state transactions, for the privilege of doing business in the State, whereas a use tax is imposed on the consumer for the benefit of using the State's roads and bridges. In so ruling, the Court stated that in order for a local jurisdiction to impose a local use tax, it "must be authorized by voters in local referendums."

Local jurisdictions with a voter-approved local use tax have been unaffected by the *Street* decision, including more than 90 cities and now 40 counties (last month the voters of Dunklin County approved a local use tax by nearly a two-to-one margin). It is the remaining cities and counties – where the measure has either not yet gone before the voters or the people have voted

against such a tax - to which Senate Substitute for House Committee Substitute for House Bill No. 1329 is directed.

Senate Substitute for House Committee Substitute for House Bill No. 1329 would create the fiction that all vehicle purchases are made within the State, regardless of where they actually occur, so that such transactions would be treated as sales tax events. However, manipulating the location of the sale in such a way would circumvent the local referendum process, in defiance of the Supreme Court's directive in *Street*, and deny voters the ability to approve or reject a local use tax on such purchases. Moreover, it exploits the voters' prior consent to a local sales tax by expanding the breadth of that tax beyond what was approved. In sum, Senate Substitute for House Committee Substitute for House Bill No. 1329 undermines the fundamental principle that the imposition and rate of local taxes is an issue for Missouri voters, and with my action today, the people will retain that authority.

II. New and Retroactive Tax

Today, no local tax is collected on out-of-state vehicle sales in jurisdictions that do not have a voter-approved local use tax. Despite this fact, Senate Substitute for House Committee Substitute for House Bill No. 1329 attempts to convey the opposite, in part by stating that the tax created by this legislation "shall continue to be imposed" (emphasis added). Exacerbating this fabrication, Senate Substitute for House Committee Substitute for House Bill No. 1329 would apply the tax retroactively to transactions that have already been finalized (i.e., [the legislation] "restores, retroactively and prospectively, the application of Missouri's local sales tax law . . . on the sale of all motor vehicles, trailers, boats, and outboard motors . . ." (emphasis added). Under a plain reading of that provision, individuals living in jurisdictions without a local use tax, who have purchased a vehicle out-of-state since the Court's mandate in *Street*, and have registered that vehicle and paid all applicable taxes, would, upon the effective date of Senate Substitute for House Committee Substitute for House Bill No. 1329, become liable for an additional "sales" tax of potentially hundreds of dollars. Such individuals would require no additional confirmation that Senate Substitute for House Committee Substitute for House Bill No. 1329 imposes a new tax – and does so without voter approval.

III. Other Concerns

While my disapproval of Senate Substitute for House Committee Substitute for House Bill No. 1329 unequivocally centers on the imposition of a new tax without voter approval, other concerns remain.

First, the Commerce Clause of the United States Constitution, which prevents states from discriminating against interstate commerce, would become relevant when a Missourian purchases a vehicle in another state that imposes a tax at the time of sale. To avoid duplicative taxation (a tax at the time of purchase and a tax upon registration), states, including Missouri, offset the assessment of a use tax with any tax that has been paid in the other state at the time of purchase. State and federal courts have held that failing to provide such an offset creates double taxation on out-of-state transactions in violation of the Commerce Clause. Senate Substitute for House Committee Substitute for House Bill No. 1329, however, does not provide an offset.

And for those who cite the difficulty that local jurisdictions are having in carrying out essential local functions following the reduction in revenue caused by *Street*, it is important to be mindful of the limitation that Article X, Section 10(a) of the Missouri Constitution imposes upon the General Assembly. This section states, in relevant part, that “[e]xcept as provided in this constitution, the general assembly shall not impose taxes upon counties or other political subdivisions or upon the inhabitants or property thereof for municipal, county or other corporate purposes.”

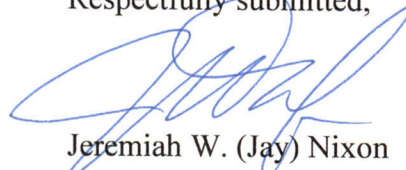
Both the Commerce Clause and Article X, Section 10(a) are important because Senate Substitute for House Committee Substitute for House Bill No. 1329 contains a non-severability clause. If any provision is found to be unenforceable, the entire legislation would become invalid.

Conclusion

Senate Substitute for House Committee Substitute for House Bill No. 1329 is an affront to every Missourian who has not yet had the opportunity to vote on whether to impose a local use tax, and especially to those voters in jurisdictions that have explicitly rejected such a tax. And while I recognize the impact that the *Street* decision is having on local governments and auto dealers across the State, that is not justification for usurping the authority of the voters on matters dealing with local taxation.

In accordance with the above stated reasons for disapproval, I am returning Senate Substitute for House Committee Substitute for House Bill No. 1329 without my approval.

Respectfully submitted,



Jeremiah W. (Jay) Nixon
Governor