



Staff Report

Subject: Use Tax

Department/Program: Administration

Explanation:

The largest revenue source for the City's budget is sales tax, comprising of 40.1% of the City's revenue in fiscal year 2021. Historically sales taxes have only been collected on goods purchased within the City limits of the City of Ballwin, i.e. at local stores such as Schnucks or Lowe's. In recent years online sales have grown significantly. In the early 2000's online sales represented less than 5% of sales overall. However, in recent years that percentage has grown significantly, and is expected to continue to do so moving forward. The Covid-19 pandemic has accelerated the trend to online sales. Currently, online sales represent approximately 15% of all sales overall¹.

In the early days of online sales no sales tax was collected on online purchases. That began to shift with some sales taxes being collected on web sites that had a physical presence, or "economic nexus" in a particular state. Finally, in 2018 the United States Supreme Court issued a ruling in the case of South Dakota vs. Wayfair that overturned previous rulings requiring a physical presence in order to collect sales tax. This opened the door for states and localities to begin implementing policies to collect sales tax on online purchases.

As of 2021, 48 states had passed legislation authorizing the collection of sales tax on online purchases. The two remaining holdouts were Florida and Missouri. As a reminder, in Missouri cities can only collect sales taxes that are authorized in state statute. Finally, in 2021 the State of Missouri passed SB 153² which made several changes to taxation in the state. The most significant change was authorizing cities to enact, with voter approval, a sales tax on online purchases. This new tax, if authorized by the voters, would begin collection on January 1, 2023.

It should be noted that SB 153 also implemented a phase down of the gross receipts tax on cable, which will go from its current level of 5% down to 2.5% in 2027. This could result in a net loss of \$168,000 per year in revenue starting in 2027 based on current numbers. Therefore, if the City does not implement an online sales tax, we will actually lose revenue from SB 153. In addition, as more sales transition to online purchases, the City's overall sales tax receipts could begin to shrink significantly in the future without passage of an online sales tax.

1 https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf

2 https://www.senate.mo.gov/21info/BTS_Web/Bill.aspx?SessionType=R&BillID=54245348

In Missouri, sales taxes on online purchases are collected via a “use tax”. The use tax has existed for many years (though not in Ballwin). This has historically been a tax on out of state purchases made in the state, and had primarily applied to businesses making purchases of goods or supplies across state lines. With the passage of SB 153 the use tax will now be evolved into a sales tax on online purchases as well. It is important to note that a use tax can only be implemented in a municipality with approval by the voters. There is currently no use tax in the City of Ballwin.

With the implementation of SB 153 and the use tax in Missouri, cities across the state are now deciding whether or not to put a use tax before their voters. There are currently over 250 cities in the state where the voters have already authorized a use tax, including many in St. Louis County such as Kirkwood, Webster Groves, Hazelwood, Sunset Hills, Olivette, and others. In addition, in advance of the 2023 implementation, numerous other cities are placing the use tax on the ballot in April of 2022. This group will include many if not all of our neighboring cities, including Ellisville, Chesterfield, Manchester, Wildwood, and Town and Country. As of this writing both Ellisville and Chesterfield have already voted to put it on the ballot and the others are deliberating it.

It is important to note that a ballot initiative in the City of Ballwin would only apply to collection of the City’s local option sales taxes, which are a ½ cent sales tax for capital improvements and a ½ cent sales tax for parks. The City’s other sales taxes, the 1 cent general sales tax and ½ cent public safety tax are both County-wide taxes. As such, in order for those taxes to be collected on online purchases, the voters across St. Louis County will need to approve a use tax as well. In addition, the City would not receive additional funding from the County-wide sales tax pool either until the County voters approve a use tax. At this time it is unclear whether or not St. Louis County intends to place a use tax on the April ballot.

Prior to placing this question on the ballot, the Board may want to consider how it will impact the City of Ballwin financially. As previously mentioned, sales tax typically makes up 40-45% of the City’s revenues. For FY 2022, it is anticipated that the City will generate total sales tax revenue of \$10,159,000. Of that, the two local option taxes are expected to bring in \$1,511,000 (capital sales tax) and \$1,771,000 (parks tax). If we apply the 15% multiplier to those numbers based on the percentage of online sales, we expect that we could bring in approximately \$492,000 in the first year of the use tax, based on the local option taxes only. That number would increase should the use tax also be approved by County voters, allowing us to capture the countywide general and public safety sales taxes. Additionally, as more sales are shifted from brick and mortar stores to online purchases, we expect the number to increase each year.

Should the ballot measure be placed before the voters, the actual ballot language is established in SB 153. The language must be substantially similar to the following: “Shall the City of Ballwin impose a local use tax at the same rate as the total local sales tax rate, 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?”

Neither SB 153 nor the required ballot language place any restrictions on the use of funds. Cities are allowed to use them for any purpose they see fit. As such, the use of these funds does not have to be decided now. However, should this issue be placed before the voters, it may be appropriate to determine a proposed use for the money as rationale to the public for needing the tax. This can be discussed in the future but one suggestion would be to put some or all of this additional funding towards the public works department and specifically, to increase spending on street repair in the City. You may

recall that the City did a budget survey in 2021. In that survey streets were at or near the top of areas that the public rated of high importance and also areas where they thought the City could improve. Having this additional funding to take better care of our streets each year does seem to align with the public's wishes. Again, this decision does not need to be made today and more public input could be sought if so desired.

In order to put this measure before the voters at the April 2022 election, the Board would need to have a final vote on this issue by the first meeting in December, due to the filing deadline to place issues on the ballot.

If the Board is interested in placing this issue before the voters, there are some advantages to doing so during the April election. The first is cost. As the April election is a municipal election, we will already have candidates on the ballot. Therefore, there is no additional cost to the City of placing a tax question such as this before the voters. In St. Louis County, costs for running the election are shared equally by any entity that has items on the ballot. Since so many entities have items on the April ballot, the cost is usually relatively low, \$17,000 or less. Conversely, if this were to be brought forward during August or November or one of the other election windows, the City would have to bear a much higher share of the costs since typically fewer entities have items on those ballots. The cost of holding this vote during one of those windows could easily run from \$50,000 - \$100,000.

In addition, with so many cities placing this question on the April ballot, there is opportunity for shared education and wider public understanding of the issue. This is similar to a ballot initiative of several years ago regarding sales tax on motor vehicles purchased out of state. Having multiple cities and/or the County communicating on the same issues helps raise voter awareness. The Metro St. Louis Municipal League has indicated that they intend to help with awareness efforts as well, since this issue is so important to so many cities.

Recommendation:

Staff recommends the Board consider drafting legislation to place a use tax before the voters on the April 2022 ballot.

Submitted By: Eric Sterman

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