



GOVERNOR OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
GOVERNOR

P.O. Box 720
(573) 751-3222

June 11, 2014

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you Senate Substitute for Senate Committee Substitute for House Bill No. 1865 entitled:

AN ACT

To repeal section 143.451, RSMo, and to enact in lieu thereof two new sections relating to taxation.

I disapprove of Senate Substitute for Senate Committee Substitute for House Bill No. 1865. My reasons for disapproval are as follows:

Senate Substitute for Senate Committee Substitute for House Bill No. 1865 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 Senate Substitute for Senate Committee Substitute for House Bill No. 1865 and its brethren in the final hours of the legislative session, the General Assembly 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

¹ Conference Committee Substitute for House Committee Substitute for Senate Bill No. 584; 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; and House Bill No. 1455.

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 from the \$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.

Senate Substitute for Senate Committee Substitute for House Bill No. 1865 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 vital public services.

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 Senate Substitute for Senate Committee Substitute for House Bill No. 1865 and the other bills 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 Senate Substitute for Senate Committee Substitute for House Bill No. 1865 and other bills that I am vetoing today. For the reasons stated herein, this is an endeavor I cannot support.

Special Exemptions for Restaurants, Convenience Stores, and Grocery Stores

Senate Substitute for Senate Committee Substitute for House Bill No. 1865 would create new exemptions from state sales and use taxes for utilities and electricity used by restaurants, cafeterias, fast food restaurants, delicatessens, bakeries, grocery stores, convenience stores, and other facilities selling prepared food. This provision is projected to reduce state revenue by up to \$51 million annually, although the General Assembly failed to account for this reduction in the budget they enacted for the fiscal year that will begin July 1. Unlike many of the new tax exemptions passed on the last day of the legislative session, the new exemptions in Senate Substitute for Senate Committee Substitute for House Bill No. 1865 were included in an introduced bill and were the subject of public hearings in both the House and the Senate. Also unlike many of the other new exemptions passed on the last day of session, the new exemptions in Senate Substitute for Senate Committee Substitute for House Bill No. 1865 are made expressly inapplicable to the local sales tax and are thereby limited solely to the state taxes. *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”).

However, the new exemptions in Senate Substitute for Senate Committee Substitute for House Bill No. 1865 bear resemblance to the others passed on the last day of the legislative session in that proponents characterize them as mere clarifications of current law. However, that is not the case. Instead, these new exemptions for restaurants, convenience stores, grocery stores and the like would abrogate three Missouri Supreme Court decisions, which held that such entities were not entitled to the tax exemptions available to manufacturers and instead must continue paying taxes as they had always done. *See Brinker Missouri, Inc. v. Director of Revenue*, 319 S.W.3d 433, 435 (Mo. banc 2010) (affirming the denial of a refund claim for taxes paid by chain restaurants); *Aquila Foreign Qualifications Corp. v. Director of Revenue*, 362 S.W.3d 1, 2 (Mo. banc 2012) (affirming the denial of a refund claim for taxes paid by chain convenience stores); *Union Elec. Co. v. Director of Revenue*, 425 S.W.3d 118, 120 (Mo. banc 2014) (affirming the denial of a refund claim for taxes paid by chain grocery stores). After failing repeatedly to persuade a court to excuse them from their legal obligations, the affected businesses sought new, made-to-order tax loopholes from the General Assembly that would treat cooking a cheeseburger as “manufacturing” and frying up a glazed doughnut as “processing.”

Special tax exemptions such as those in Senate Substitute for Senate Committee Substitute for House Bill No. 1865 erode the overall tax base and shift a greater tax burden to the majority of Missourians unable to utilize such loopholes. None of these new exemptions requires the creation of any new jobs. Instead, they simply provide a new subsidy to selected businesses without a clearly articulated economic reason for doing so and without accounting for the resulting revenue loss in the state budget. This is fiscally irresponsible and therefore cannot receive my support.

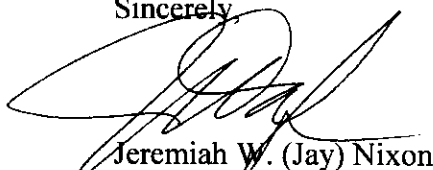
Corporate Income Allocation

Senate Substitute for Senate Committee Substitute for House Bill No. 1865 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.

In accordance with the above-stated reasons for disapproval, I am returning Senate Substitute for Senate Committee Substitute for House Bill No. 1865 without my approval.

Sincerely



Jeremiah W. (Jay) Nixon
Governor