



GOVERNOR OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON
GOVERNOR

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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 No. 2 for House Committee Substitute for Senate Bill No. 693 entitled:

AN ACT

To repeal sections 99.845, 135.700, 143.041, 143.071, 143.191, 143.451, 144.030, 144.044, 144.610, 285.230, 285.232, 285.233, and 285.234, RSMo, and to enact in lieu thereof twenty-two new sections relating to taxation, with existing penalty provisions.

I disapprove of Conference Committee Substitute No. 2 for House Committee Substitute for Senate Bill No. 693. My reasons for disapproval are as follows:

Conference Committee Substitute No. 2 for House Committee Substitute for Senate Bill No. 693 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 No. 2 for House Committee Substitute for Senate Bill No. 693 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

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; 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.

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 No. 2 for House Committee Substitute for Senate Bill No. 693 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

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 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 No. 2 for House Committee Substitute for Senate Bill No. 693 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 cases 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 businesses 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, broadening the overall tax base and reducing 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 No. 2 for House Committee Substitute for Senate Bill No. 693 and the other bills I am vetoing today. For the reasons stated herein, this is an endeavor I cannot support.

Special Exemption for Used Cars

Conference Committee Substitute No. 2 for House Committee Substitute for Senate Bill No. 693 exempts used cars that are 10-years or older from sales tax when the sale price is less than \$15,000. According to the legislature's own estimate, this provision would reduce state and local revenues by as much as \$60 million annually, with more than \$30 million annually in reduced revenue for highways and \$26 million annually in reduced revenue for local jurisdictions.³ Not only would this revenue reduction impact the amount of state and local highway maintenance and construction that can be undertaken, it could also jeopardize matching federal highway funds and make it more difficult to cover debt service on previously issued bonds to finance state and local road and bridge projects. With the average age of vehicles on

³ The \$26 million annual reduction in local revenue from this provision is not dissimilar to the local revenue loss that was anticipated as a result of local jurisdictions no longer being able to collect tax on out-of-state vehicle purchases following the decision in *Street v. Director of Revenue*, 361 S.W.3d 355, 356 (Mo. banc 2012). It is puzzling that after passing legislation to prevent this anticipated loss of local tax revenue last year, the General Assembly would turn around the very next year and pass legislation to drain a similar amount of revenue from those same local jurisdictions.

America's roads increasing to 11.4 years, the number of vehicles subject to this exemption and the corresponding impact to state and local revenue is likely to increase over time.⁴

I cannot support a new sales tax exemption that would drain funding for transportation at the very same time the General Assembly is asking Missourians to foot the bill on a \$6 billion sales tax increase to fund transportation needs. By passing this legislation and voting to put a sales tax increase for transportation on the ballot, the General Assembly is with one hand doling out special breaks that would directly and permanently reduce funding for roads, while with the other hand reaching into the pockets of every Missourian for more road funding. This is poor fiscal policy and poor tax policy, and therefore does not receive my approval.

Conference Committee Substitute No. 2 for House Committee Substitute for Senate Bill No. 693 has a number of additional problems that prevent it from receiving my signature. First, it fails to treat similarly-situated taxpayers similarly, instead picking as winners the purchasers of certain used cars based on the age of the vehicle and its sale price, while leaving all remaining purchasers in the dust. In addition, the limitation to vehicles 10-years or older and with a sale price of \$15,000 or less is an arbitrary cut-off that will lead to absurd results. For example, there is no sound economic or policy reason for why a nine year-old vehicle that costs \$14,999 or an 11-year old vehicle that costs \$15,001 is any more or less deserving of a tax exemption than the vehicles covered by this bill. These are precisely the kind of problems created with special carve-outs that pick winners and losers based on arbitrary distinctions rather than sound tax or economic policy.

In addition, as drafted this exemption is ripe for abuse and can easily be manipulated to avoid or reduce taxes on purchases not intended for the exemption. For example, current law allows the seller of a vehicle to use the vehicle's sales price as a credit toward the purchase price of a subsequent vehicle in determining the tax due on the purchase.⁵ With the new exemption in Conference Committee Substitute No. 2 for House Committee Substitute for Senate Bill No. 693, used car dealers could set up straw transactions to sell used cars older than 10 years to their customers and then take those same cars as trade-ins toward newer cars, which would allow their customers to reduce or avoid paying altogether the tax on the newer car purchase. That this may be an unintended consequence of the legislation does not make its impact on state and local budgets any less real or immediate.

⁴ https://www.polk.com/company/news/polk_finds_average_age_of_light_vehicles_continues_to_rise

⁵ Section 144.025, RSMo, provides:

Notwithstanding any other provisions of law to the contrary, in any retail sale . . . where any article on which sales or use tax has been paid, credited, or otherwise satisfied or which was exempted or excluded from sales or use tax is taken in trade as a credit or part payment on the purchase price of the article being sold, the tax imposed by sections 144.020 and 144.440 shall be computed only on that portion of the purchase price which exceeds the actual allowance made for the article traded in or exchanged . . . This section shall also apply to motor vehicles . . . sold by the owner or holder of the properly assigned certificate of ownership if the seller purchases or contracts to purchase a subsequent motor vehicle . . . within one hundred eighty days before or after the date of the sale of the original article and a bill of sale showing the paid sale price is presented to the department of revenue at the time of licensing. . . .

Special Exemption for Personal Seat Licenses

Conference Committee Substitute No. 2 for House Committee Substitute for Senate Bill No. 693 would exempt from tax a right of first refusal for tickets sold at the Sprint Center in Kansas City. As with the other new exemptions enacted in this and similar bills, the General Assembly failed to account for the fiscal impact of this exemption in the Fiscal Year 2015 budget they enacted. It is unclear why this activity should receive a new special tax exemption, and it is even more unclear why the General Assembly would pass a special law, potentially violating the Missouri Constitution, in order to effectuate it. Unfortunately, because this provision never received a public hearing, the answer remains as elusive as my support.

Expansion of the Wine & Grape Tax Credit

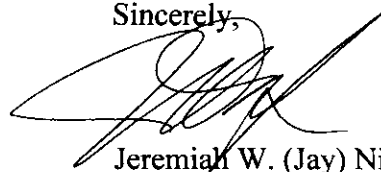
Conference Committee Substitute No. 2 for House Committee Substitute for Senate Bill No. 693 would expand the Wine and Grape Production Tax Credit by making purchases of used equipment eligible for the credit. The General Assembly failed to account for the estimated \$125,000 reduction in state revenue from this expansion in the Fiscal Year 2015 budget they passed.

Beginning more than 160 years ago, Missouri's wine industry has grown to more than 120 wineries generating \$1.6 billion annually in economic impact. It is difficult to believe that the continued success of this thriving industry depends on the expansion of this relatively modest government subsidy. While the wine industry has a tremendous positive economic impact for the state, the Wine and Grape Production Tax Credit fails to generate a positive return, with the most recent cost benefit analysis indicating that for every dollar in tax credits issued, the state could expect to receive just 3 cents in general revenue return. The lack of a positive return on investment is what prompted the bipartisan Tax Credit Review Commission to call for the outright elimination of the credit.

Unlike other tax credits enacted or reauthorized this legislative session, this expansion of the Wine and Grape Production Tax Credit would not make it subject to appropriation or restructure it in a way that would make it revenue-neutral. Instead, Conference Committee Substitute No. 2 for House Committee Substitute for Senate Bill No. 693 would simply broaden the activities eligible for the credit, thereby increasing the credit's cost and diverting additional funding from education and other vital public services, none of which was taken into account in the budget passed by the General Assembly. This is fiscally irresponsible and does not receive my support.

In accordance with the above-stated reasons for disapproval, I am returning Conference Committee Substitute No. 2 for House Committee Substitute for Senate Bill No. 693 without my approval.

Sincerely,



Jeremiah W. (Jay) Nixon
Governor