

**BEFORE THE
MISSOURI ETHICS COMMISSION**

Filed
JUL 18 2013
Missouri Ethics
Commission

MISSOURI ETHICS COMMISSION,)	
)	
Petitioner,)	
)	
v.)	
)	
CITY OF RICHMOND,)	Case No. 13E047
a political subdivision,)	
)	
and)	
)	
RONALD BROHAMMER,)	
City Administrator,)	
)	
Respondents.)	

**JOINT STIPULATION OF FACTS, WAIVER OF HEARING
BEFORE THE MISSOURI ETHICS COMMISSION, AND
CONSENT ORDER WITH JOINT PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The undersigned parties jointly stipulate to the facts and consent to the action set forth below.

The undersigned Respondents, City Of Richmond and Ronald Brohammer, acknowledge that they have received and reviewed a copy of the Complaint filed by the Petitioner in this case, and the parties submit to the jurisdiction of the Missouri Ethics Commission.

The undersigned Respondents further acknowledge that they are aware of the various rights and privileges afforded by law, including but not limited to: the right appear and be represented by counsel; the right to have all charges against Respondents be proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Respondents; the right to present evidence on Respondents' behalf at the hearing; and the right to a decision upon the record of the hearing. Being aware of

these rights provided to Respondents by operation of law, the undersigned Respondents knowingly and voluntarily waive each and every one of these rights and freely enter into this Joint Stipulation of Facts, Waiver of Hearing before the Missouri Ethics Commission, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law, and agree to abide by the terms of this document.

I.

Based upon the foregoing, the Petitioner and the undersigned Respondents jointly stipulate to the following and request that the Missouri Ethics Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law, as follows:

JOINT PROPOSED FINDINGS OF FACT

1. The Missouri Ethics Commission (“the Commission”) is an agency of the State of Missouri established pursuant to Section 105.955, RSMo, in part for the purpose of enforcing the provisions of Chapter 130, RSMo.

2. Respondent City of Richmond is a political subdivision of the State of Missouri and a person as defined by Section 130.011(22), RSMo.

3. Respondent, Ronald Brohammer is the City Administrator for the City of Richmond, Missouri. For purposes of Chapter 130, RSMo, the City Administrator is the principal officer of the City of Richmond.

4. The City of Richmond had a use tax measure on the ballot of the April 2, 2013 election.

5. Pursuant to Section 105.961, RSMo, the Commission’s staff has investigated a complaint filed with the Commission and reported the investigation’s findings to the Commission.

6. Based on the report of the Commission's staff, the Commission determined that there were reasonable grounds to believe that violations of law occurred, and it therefore authorized a hearing in this matter pursuant to Section 105.961.3, RSMo.

7. Respondents published, circulated and distributed flyers relating to a use tax ballot measure regarding the City of Richmond, Missouri, attached hereto as Exhibit A, by mailing them to the City's water customers along with their bill.

8. The City of Richmond paid for the printed matter attached hereto as Exhibit A.

9. The printed matter attached hereto as Exhibit A related to a ballot measure in the April 2013 election.

10. The flyer attached hereto as Exhibit A should have contained a clear and conspicuous statement: "Paid for by City of Richmond, Ronald Brohammer, City Administrator, 205 Summit Street, Richmond, MO", but it did not contain that full disclosure statement.

11. The Respondent maintains that it was unaware of the requirement at the time but acknowledges the requirement was not followed.

JOINT PROPOSED CONCLUSIONS OF LAW

12. "Any person publishing, circulating, or distributing any printed matter relative to any candidate for public office or any ballot measure shall on the face of the printed matter identify in a clear and conspicuous manner the person who paid for the printed matter with the words "Paid for by" followed by the proper identification of the sponsor pursuant to this section." § 130.031.8, RSMo.

13. "[P]rinted matter" shall be defined to include any pamphlet, circular, handbill, sample ballot, advertisement, including advertisements in any newspaper or other periodical, sign, including signs for display on motor vehicles, or other imprinted or lettered material; but

‘printed matter’ is defined to exclude ... any sign personally printed and constructed by an individual without compensation from any other person and displayed at that individual's place of residence or on that individual's personal motor vehicle; any items of personal use given away or sold, such as campaign buttons, pins, pens, pencils, book matches, campaign jewelry, or clothing, which is paid for by a candidate or committee which supports a candidate or supports or opposes a ballot measure and which is obvious in its identification with a specific candidate or committee and is reported as required by this chapter; and any news story, commentary, or editorial printed by a regularly published newspaper or other periodical without charge to a candidate, committee or any other person.” § 130.031.8, RSMo.

14. In regard to any printed matter paid for by a corporation or other business entity, labor organization, or any other organization not defined to be a committee by subdivision (9) of section 130.011 and not organized especially for influencing one or more elections, it shall be sufficient identification to print the name of the entity, the name of the principal officer of the entity, by whatever title known, and the mailing address of the entity, or if the entity has no mailing address, the mailing address of the principal officer. § 130.031.8(3), RSMo.

15. There is probable cause to believe that Respondents violated Section 130.031.8(3), RSMo, by distributing flyers relating to a use tax ballot measure in the April 2013 election without including a full paid for by disclosure statement.

II.

Based on the foregoing, the parties hereto mutually agree and stipulate that the following shall constitute the order entered by the Missouri Ethics Commission in this matter. This order will be effective immediately upon the issuance of the Consent Order of the Missouri Ethics Commission without further action by any party:

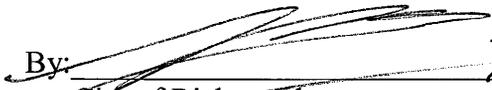
1. The parties to this Joint Stipulation understand that the Petitioner will maintain this Joint Stipulation as an open and public record of the Missouri Ethics Commission.
2. The Commission shall issue its Consent Order in the form attached hereto as Exhibit 1.
 - a. Respondents shall comply with all relevant sections of Chapter 130, RSMo.
 - b. It is the Order of the Missouri Ethics Commission that a fee is imposed against Respondents in the amount of \$100.00, pursuant to Section 105.961.4(6), RSMo. The fee will be paid by check or money order made payable to the Missouri Ethics Commission.
3. The parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before the Commission based upon the Complaint filed by the Petitioner in the above action.
4. Respondents, together with their heirs, successors, and assigns, do hereby waive, release, acquit and forever discharge the Missouri Ethics Commission and its attorneys of or from any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, a claim for attorney's fees whatsoever which Respondents or

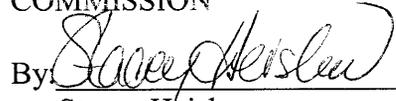
Respondents' attorney may now have or which they may hereafter have, which are based upon or arise out of the above cases.

5. This joint stipulation does not settle, release, waive, or otherwise relieve Respondents from any late filing fees due to the appropriate filing authority, including Petitioner Missouri Ethics Commission. Respondents understand that late filing fees accrue automatically under Section 105.963, RSMo.

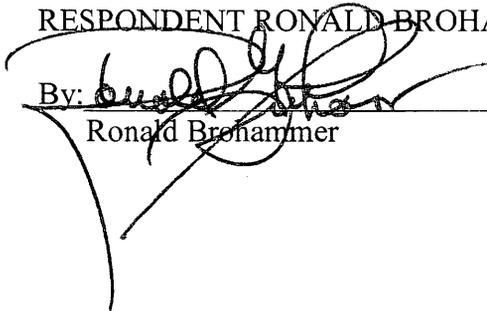
RESPONDENT CITY OF RICHMOND

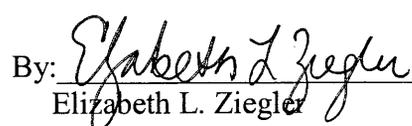
PETITIONER MISSOURI ETHICS COMMISSION

By: 
City of Richmond
Date 7-12-13

By: 
Stacey Heislen
Acting Executive Director
Date 7/17/13

RESPONDENT RONALD BROHAMMER

By: 
Ronald Brohammer
Date 7/12/13

By: 
Elizabeth L. Ziegler
Attorney for Petitioner
Date 7/17/13

BALLOT LANGUAGE



WHAT WILL THE BALLOT LANGUAGE SAY?

Shall the City of Richmond, Missouri impose a local use tax on out-of-state purchases at the same rate as the total local sales tax rate, currently two percent (2%), provided that if any local sales tax rate is repealed, reduced or raised by voter approval, the respective local use tax rate shall also be repealed, reduced or raised by the same action? A use tax return shall not be required to be filed by persons whose purchases from out-of-state vendors do not in total exceed two thousand dollars (\$2,000.00) in any calendar year.

- YES
NO

After considerable discussion and careful consideration in January, 2013, the Richmond City Council voted unanimously to place the question of implementing a Local Use Tax before the voters of the City of Richmond on the April 2, 2013 General Election Ballot.

These questions, answers, and fact sheet are being presented to help you understand what a Use Tax is and how it works.

FACT: Both Ray County and the State of Missouri have implemented a use tax



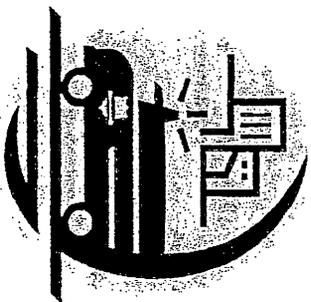
FOR ADDITIONAL INFORMATION

CITY OF RICHMOND
CONTACT: RONALD BROHAMMER
CITY ADMINISTRATOR

205 SUMMIT STREET
RICHMOND, MO 64085
PHONE: 816-776-5304
FAX: 816-776-8216
E-MAIL: RBROHAMMER@CITYOFRICHMOND.MO.ORG

CITY OF RICHMOND

USE TAX INFORMATIONAL BROCHURE



Question & Answers

TEL. 816-776-5304

EXHIBIT

A

tabbier

WHAT IS LOCAL USE TAX?

A local use tax is applied, in lieu of local sales tax, on transactions that individuals and businesses conduct with out-of-state vendors, including catalog, internet, and direct market sales.

The key point here is in lieu of. Local sales tax is not collected on the transactions noted above. As out-of-state sales increase, particularly, internet sales, sales tax is lost to the City. Use tax is effectively sales tax on items purchased from vendors outside of the state of Missouri.

FACT: The term "Use Tax" is appropriate because items purchased as noted above are for USE in the local area.

HOW IS USE TAX COLLECTED?

If the out-of-state vendor has a facility in Missouri, the vendor will collect the local use tax, along with the state use tax, and remit both to the Missouri Department of Revenue (DOR). The DOR then distributes the local use tax to the local government just as it does sales tax.

If the out-of-state vendor does not have a facility in Missouri, the purchaser must file a use tax return with the DOR, but only if the individual or business has more than \$2,000 in such purchases during the calendar year.

FACT: The requirement to file a use tax return exists in order to pay tax owed to the state whether a local use tax is implemented or not.

WHAT WOULD THE MONEY GENERATED BY A USE TAX BE USED FOR?

The use tax, as previously noted, is in lieu of sales tax and is deposited into the City's accounts in exactly the same manner as sales tax.

FACT: The City of Richmond has 2% total sales tax which is divided into four accounts--all of which have been voted upon and approved by Richmond citizens. The City's 2% sales tax is distributed as follows:

- 1% General Tax: This tax funds the general overhead of the City, including general administration, Police Department, Fire Department, day-to-day street maintenance, etc.

- 1/2% Transportation Tax: 2/3 of this tax funds major street improvements, including asphalt overlay, rebuilding of streets, etc. and the remaining 1/3 of this tax funds storm water improvements relating to transportation issues.

- 1/2% Municipal Complex Building Tax: This tax funds the buildings housing City Hall, Police Department, and Fire Department.

- 1/2% Park Tax: This tax funds park maintenance and improvements, such as the Southview Parking lot, Hamman Park, etc.

FACT: The use tax would be the same percentage as the sales tax and would increase or decrease as the sales tax would increase or decrease as voted by Richmond voters.

IS THE CITY ASKING VOTERS TO APPROVE THIS TAX TO GENERATE MORE REVENUE FOR THE CITY?

The answer to this question is both yes and no.

As internet purchases increase, the City loses revenue because sales tax is not collected on items purchased in this manner.

As you can readily see from the above list, sales tax is a very important source of income to the City. Sales tax makes up about 1/3 of the City's general fund income and provides additional income for transportation, municipal complex buildings, and parks. As this income drops due to increasing out-of-state (internet/catalog/phone) sales, and, if it is not replaced by the local use tax, then city services and work currently accomplished may decrease or not be possible.

FACT: In March of 2012 the Missouri Supreme Court ruled that local sales taxes are not required to be paid on automobiles, trucks, trailers, boats, etc. purchased out of state. This means if a \$30,000 automobile is purchased out of state, the City of Richmond will NOT collect the 2% sales tax (in this example \$600). Local communities must pass a use tax in order for the local government to collect revenue on such purchases.

HOW MUCH REVENUE HAS THE CITY LOST?

It is difficult to answer this question, but a study completed by the State of Missouri in 2008 showed on average, municipalities with a use tax received about \$50 per capita. Since we have about 6,000 residents, this would indicate the City has

lost approximately \$300,000 each year. This figure will likely increase as internet and out-of-state (particularly vehicle) sales increase. Further, as internet sales increase, the City's sales tax revenues will likely decrease due to a decrease in local purchases.

WHY DO WE NEED A USE TAX?

As previously noted, these dollars support the City's general fund, parks, municipal complex buildings, and the street/storm water (transportation) funds.

Those who shop on the internet and purchase out of state inadvertently are not supporting the local infrastructure and City services. Those who shop locally are generating sales tax which supports city activities. In a sense, it is a matter of equality we all support the infrastructure of our community.

FACT: Use tax also levels the playing field for our local vendors who are put at a disadvantage when compared to internet or out-of-state sales.

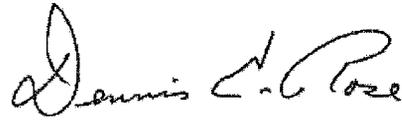
IF NOTICED WHEN I MADE AN ON-LINE PURCHASE I PAID SALES TAX. ISN'T THIS DOUBLE TAXATION?

No. If you make an internet purchase and have the item shipped to the store for pick-up, you are paying sales tax. If you make an internet purchase and ship the item directly to your house, you are paying use tax. Currently, the State of Missouri and Ray County have a voter approved use tax. Therefore, the tax you are paying on an internet sale shipped directly to your house supports the state and county, but not the City of Richmond. You are paying a lower rate of tax on these purchases than you would on in-store (sales tax qualified) purchases.

FACT: In any case use tax only applies when sales tax is not paid on out-of-state purchases.

SO ORDERED this 18th day of July, 2013

By:

A handwritten signature in black ink that reads "Dennis C. Rose". The signature is written in a cursive style with a large initial "D".

Dennis Rose, Chair
Missouri Ethics Commission