AN ACT

To repeal section 144.030, RSMo, and to enact in lieu thereof two new sections relating to the sales tax treatment of sales for resale, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 144.030, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 144.018 and 144.030, to read as follows:

144.018. 1. Notwithstanding any other provision of law to the contrary, except as provided under subsections 2 or 3 of this section, when a purchase of tangible personal property or service subject to tax is made for the purpose of resale, such purchase shall be either exempt or excluded under this chapter if the subsequent sale is:

   (1) Subject to a tax in this or any other state;
   (2) For resale;
   (3) Excluded from tax under this chapter;
   (4) Subject to tax but exempt under this chapter; or
   (5) Exempt from the sales tax laws of another state, if the subsequent sale is in such other state.

The purchase of tangible personal property by a taxpayer shall not be deemed to be for resale if such property is used or consumed by the taxpayer in providing a service on which tax is not imposed by subsection 1 of section 144.020, except purchases made in fulfillment of any obligation under a defense contract with the United States government.
2. For purposes of subdivision (2) of subsection 1 of section 144.020, a place of amusement, entertainment or recreation, including games or athletic events, shall remit tax on the amount paid for admissions or seating accommodations, or fees paid to, or in such place of amusement, entertainment or recreation. Any subsequent sale of such admissions or seating accommodations shall not be subject to tax if the initial sale was an arms length transaction for fair market value with an unaffiliated entity. If the sale of such admissions or seating accommodations is exempt or excluded from payment of sales and use taxes, the provisions of this subsection shall not require the place of amusement, entertainment, or recreation to remit tax on that sale.

3. For purposes of subdivision (6) of subsection 1 of section 144.020, a hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp, or other place in which rooms, meals, or drinks are regularly served to the public shall remit tax on the amount of sales or charges for all rooms, meals, and drinks furnished at such hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp, or other place in which rooms, meals, or drinks are regularly served to the public. Any subsequent sale of such rooms, meals, or drinks shall not be subject to tax if the initial sale was an arms length transaction for fair market value with an unaffiliated entity. If the sale of such rooms, meals, or drinks is exempt or excluded from payment of sales and use taxes, the provisions of this subsection shall not require the hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp, or other place in which rooms, meals, or drinks are regularly served to the public to remit tax on that sale.

4. The provisions of this section are intended to reject and abrogate earlier case law interpretations of the state's sales and use tax law with regard to sales for resale as extended in Music City Centre Management, LLC v. Director of Revenue, 295 S.W.3d 465, (Mo. 2009) and ICC Management, Inc. v. Director of Revenue, 290 S.W.3d 699, (Mo. 2009).

144.030. 1. There is hereby specifically exempted from the provisions of sections 144.010 to 144.525 and from the computation of the tax levied, assessed or payable pursuant to sections 144.010 to 144.525 such retail sales as may be made in commerce between this state and any other state of the United States,
or between this state and any foreign country, and any retail sale which the state
of Missouri is prohibited from taxing pursuant to the Constitution or laws of the
United States of America, and such retail sales of tangible personal property
which the general assembly of the state of Missouri is prohibited from taxing or
further taxing by the constitution of this state.

2. There are also specifically exempted from the provisions of the local
sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and
sections 144.010 to 144.525 and 144.600 to 144.761 and from the computation of
the tax levied, assessed or payable pursuant to the local sales tax law as defined
in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525
and 144.600 to 144.745:

(1) Motor fuel or special fuel subject to an excise tax of this state, unless
all or part of such excise tax is refunded pursuant to section 142.824, RSMo; or
upon the sale at retail of fuel to be consumed in manufacturing or creating gas,
power, steam, electrical current or in furnishing water to be sold ultimately at
retail; or feed for livestock or poultry; or grain to be converted into foodstuffs
which are to be sold ultimately in processed form at retail; or seed, limestone or
fertilizer which is to be used for seeding, liming or fertilizing crops which when
harvested will be sold at retail or will be fed to livestock or poultry to be sold
ultimately in processed form at retail; economic poisons registered pursuant to
the provisions of the Missouri pesticide registration law (sections 281.220 to
281.310, RSMo) which are to be used in connection with the growth or production
of crops, fruit trees or orchards applied before, during, or after planting, the crop
of which when harvested will be sold at retail or will be converted into foodstuffs
which are to be sold ultimately in processed form at retail;

(2) Materials, manufactured goods, machinery and parts which when used
in manufacturing, processing, compounding, mining, producing or fabricating
become a component part or ingredient of the new personal property resulting
from such manufacturing, processing, compounding, mining, producing or
fabricating and which new personal property is intended to be sold ultimately for
final use or consumption; and materials, including without limitation, gases and
manufactured goods, including without limitation slagging materials and
firebrick, which are ultimately consumed in the manufacturing process by
blending, reacting or interacting with or by becoming, in whole or in part,
component parts or ingredients of steel products intended to be sold ultimately
for final use or consumption;
(3) Materials, replacement parts and equipment purchased for use directly
upon, and for the repair and maintenance or manufacture of, motor vehicles,
watercraft, railroad rolling stock or aircraft engaged as common carriers of
persons or property;

(4) Replacement machinery, equipment, and parts and the materials and
supplies solely required for the installation or construction of such replacement
machinery, equipment, and parts, used directly in manufacturing, mining,
fabricating or producing a product which is intended to be sold ultimately for
final use or consumption; and machinery and equipment, and the materials and
supplies required solely for the operation, installation or construction of such
machinery and equipment, purchased and used to establish new, or to replace or
expand existing, material recovery processing plants in this state. For the
purposes of this subdivision, a "material recovery processing plant" means a
facility that has as its primary purpose the recovery of materials into a useable
product or a different form which is used in producing a new product and shall
include a facility or equipment which are used exclusively for the collection of
recovered materials for delivery to a material recovery processing plant but shall
not include motor vehicles used on highways. For purposes of this section, the
terms motor vehicle and highway shall have the same meaning pursuant to
section 301.010, RSMo. Material recovery is not the reuse of materials within a
manufacturing process or the use of a product previously recovered. The material
recovery processing plant shall qualify under the provisions of this section
regardless of ownership of the material being recovered;

(5) Machinery and equipment, and parts and the materials and supplies
solely required for the installation or construction of such machinery and
equipment, purchased and used to establish new or to expand existing
manufacturing, mining or fabricating plants in the state if such machinery and
equipment is used directly in manufacturing, mining or fabricating a product
which is intended to be sold ultimately for final use or consumption;

(6) Tangible personal property which is used exclusively in the
manufacturing, processing, modification or assembling of products sold to the
United States government or to any agency of the United States government;

(7) Animals or poultry used for breeding or feeding purposes;

(8) Newsprint, ink, computers, photosensitive paper and film, toner,
printing plates and other machinery, equipment, replacement parts and supplies
used in producing newspapers published for dissemination of news to the general
public;

(9) The rentals of films, records or any type of sound or picture transcriptions for public commercial display;

(10) Pumping machinery and equipment used to propel products delivered by pipelines engaged as common carriers;

(11) Railroad rolling stock for use in transporting persons or property in interstate commerce and motor vehicles licensed for a gross weight of twenty-four thousand pounds or more or trailers used by common carriers, as defined in section 390.020, RSMo, in the transportation of persons or property;

(12) Electrical energy used in the actual primary manufacture, processing, compounding, mining or producing of a product, or electrical energy used in the actual secondary processing or fabricating of the product, or a material recovery processing plant as defined in subdivision (4) of this subsection, in facilities owned or leased by the taxpayer, if the total cost of electrical energy so used exceeds ten percent of the total cost of production, either primary or secondary, exclusive of the cost of electrical energy so used or if the raw materials used in such processing contain at least twenty-five percent recovered materials as defined in section 260.200, RSMo. There shall be a rebuttable presumption that the raw materials used in the primary manufacture of automobiles contain at least twenty-five percent recovered materials. For purposes of this subdivision, "processing" means any mode of treatment, act or series of acts performed upon materials to transform and reduce them to a different state or thing, including treatment necessary to maintain or preserve such processing by the producer at the production facility;

(13) Anodes which are used or consumed in manufacturing, processing, compounding, mining, producing or fabricating and which have a useful life of less than one year;

(14) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring air pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices;

(15) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring water pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices;
(16) Tangible personal property purchased by a rural water district;

(17) All amounts paid or charged for admission or participation or other fees paid by or other charges to individuals in or for any place of amusement, entertainment or recreation, games or athletic events, including museums, fairs, zoos and planetariums, owned or operated by a municipality or other political subdivision where all the proceeds derived therefrom benefit the municipality or other political subdivision and do not inure to any private person, firm, or corporation;

(18) All sales of insulin and prosthetic or orthopedic devices as defined on January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including the items specified in Section 1862(a)(12) of that act, and also specifically including hearing aids and hearing aid supplies and all sales of drugs which may be legally dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to administer those items, including samples and materials used to manufacture samples which may be dispensed by a practitioner authorized to dispense such samples and all sales of medical oxygen, home respiratory equipment and accessories, hospital beds and accessories and ambulatory aids, all sales of manual and powered wheelchairs, stairway lifts, Braille writers, electronic Braille equipment and, if purchased by or on behalf of a person with one or more physical or mental disabilities to enable them to function more independently, all sales of scooters, reading machines, electronic print enlargers and magnifiers, electronic alternative and augmentative communication devices, and items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities or sales of over-the-counter or nonprescription drugs to individuals with disabilities;

(19) All sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities and all sales made by or to all elementary and secondary schools operated at public expense in their educational functions and activities;

(20) All sales of aircraft to common carriers for storage or for use in interstate commerce and all sales made by or to not-for-profit civic, social, service or fraternal organizations, including fraternal organizations which have been declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, in their civic or charitable functions and activities and all sales made to eleemosynary and penal institutions and industries of the state, and all sales made to any private not-for-profit institution
of higher education not otherwise excluded pursuant to subdivision (19) of this subsection or any institution of higher education supported by public funds, and all sales made to a state relief agency in the exercise of relief functions and activities;

(21) All ticket sales made by benevolent, scientific and educational associations which are formed to foster, encourage, and promote progress and improvement in the science of agriculture and in the raising and breeding of animals, and by nonprofit summer theater organizations if such organizations are exempt from federal tax pursuant to the provisions of the Internal Revenue Code and all admission charges and entry fees to the Missouri state fair or any fair conducted by a county agricultural and mechanical society organized and operated pursuant to sections 262.290 to 262.530, RSMo;

(22) All sales made to any private not-for-profit elementary or secondary school, all sales of feed additives, medications or vaccines administered to livestock or poultry in the production of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber, all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as defined in section 142.028, RSMo, natural gas, propane, and electricity used by an eligible new generation cooperative or an eligible new generation processing entity as defined in section 348.432, RSMo, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and trailers. As used in this subdivision, the term "feed additives" means tangible personal property which, when mixed with feed for livestock or poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark the application of pesticides and herbicides for the production of crops, livestock or poultry. As used in this subdivision, the term "farm machinery and equipment" means new or used farm tractors and such other new or used farm machinery and equipment and repair or replacement parts thereon, and supplies and lubricants used exclusively, solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale at retail, including field drain tile, and one-half of each purchaser's purchase of diesel fuel therefor which
(a) Used exclusively for agricultural purposes;
(b) Used on land owned or leased for the purpose of producing farm products; and
(c) Used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail;

(23) Except as otherwise provided in section 144.032, all sales of metered water service, electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil for domestic use and in any city not within a county, all sales of metered or unmetered water service for domestic use:

(a) "Domestic use" means that portion of metered water service, electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil, and in any city not within a county, metered or unmetered water service, which an individual occupant of a residential premises uses for nonbusiness, noncommercial or nonindustrial purposes. Utility service through a single or master meter for residential apartments or condominiums, including service for common areas and facilities and vacant units, shall be deemed to be for domestic use. Each seller shall establish and maintain a system whereby individual purchases are determined as exempt or nonexempt;

(b) Regulated utility sellers shall determine whether individual purchases are exempt or nonexempt based upon the seller's utility service rate classifications as contained in tariffs on file with and approved by the Missouri public service commission. Sales and purchases made pursuant to the rate classification "residential" and sales to and purchases made by or on behalf of the occupants of residential apartments or condominiums through a single or master meter, including service for common areas and facilities and vacant units, shall be considered as sales made for domestic use and such sales shall be exempt from sales tax. Sellers shall charge sales tax upon the entire amount of purchases classified as nondomestic use. The seller's utility service rate classification and the provision of service thereunder shall be conclusive as to whether or not the utility must charge sales tax;

(c) Each person making domestic use purchases of services or property and who uses any portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day of the fourth month following the year of purchase, and without assessment, notice or demand, file a return and pay
sales tax on that portion of nondomestic purchases. Each person making
nondomestic purchases of services or property and who uses any portion of the
services or property so purchased for domestic use, and each person making
domestic purchases on behalf of occupants of residential apartments or
condominiums through a single or master meter, including service for common
areas and facilities and vacant units, under a nonresidential utility service rate
classification may, between the first day of the first month and the fifteenth day
of the fourth month following the year of purchase, apply for credit or refund to
the director of revenue and the director shall give credit or make refund for taxes
paid on the domestic use portion of the purchase. The person making such
purchases on behalf of occupants of residential apartments or condominiums shall
have standing to apply to the director of revenue for such credit or refund;

(24) All sales of handicraft items made by the seller or the seller's spouse
if the seller or the seller's spouse is at least sixty-five years of age, and if the total
gross proceeds from such sales do not constitute a majority of the annual gross
income of the seller;

(25) Excise taxes, collected on sales at retail, imposed by Sections 4041,  
4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United
States Code. The director of revenue shall promulgate rules pursuant to chapter
536, RSMo, to eliminate all state and local sales taxes on such excise taxes;

(26) Sales of fuel consumed or used in the operation of ships, barges, or
waterborne vessels which are used primarily in or for the transportation of
property or cargo, or the conveyance of persons for hire, on navigable rivers
bordering on or located in part in this state, if such fuel is delivered by the seller
to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such
river;

(27) All sales made to an interstate compact agency created pursuant to
sections 70.370 to 70.441, RSMo, or sections 238.010 to 238.100, RSMo, in the
exercise of the functions and activities of such agency as provided pursuant to the
compact;

(28) Computers, computer software and computer security systems
purchased for use by architectural or engineering firms headquartered in this
state. For the purposes of this subdivision, "headquartered in this state" means
the office for the administrative management of at least four integrated facilities
operated by the taxpayer is located in the state of Missouri;

(29) All livestock sales when either the seller is engaged in the growing,
producing or feeding of such livestock, or the seller is engaged in the business of
buying and selling, bartering or leasing of such livestock;

(30) All sales of barges which are to be used primarily in the
transportation of property or cargo on interstate waterways;

(31) Electrical energy or gas, whether natural, artificial or propane, water,
or other utilities which are ultimately consumed in connection with the
manufacturing of cellular glass products or in any material recovery processing
plant as defined in subdivision (4) of this subsection;

(32) Notwithstanding other provisions of law to the contrary, all sales of
pesticides or herbicides used in the production of crops, aquaculture, livestock or
poultry;

(33) Tangible personal property and utilities purchased for use or
consumption directly or exclusively in the research and development of
agricultural/biotechnology and plant genomics products and prescription
pharmaceuticals consumed by humans or animals;

(34) All sales of grain bins for storage of grain for resale;

(35) All sales of feed which are developed for and used in the feeding of
pets owned by a commercial breeder when such sales are made to a commercial
breeder, as defined in section 273.325, RSMo, and licensed pursuant to sections
273.325 to 273.357, RSMo;

(36) All purchases by a contractor on behalf of an entity located in another
state, provided that the entity is authorized to issue a certificate of exemption for
purchases to a contractor under the provisions of that state’s laws. For purposes
of this subdivision, the term "certificate of exemption" shall mean any document
evidencing that the entity is exempt from sales and use taxes on purchases
pursuant to the laws of the state in which the entity is located. Any contractor
making purchases on behalf of such entity shall maintain a copy of the entity's
exemption certificate as evidence of the exemption. If the exemption certificate
issued by the exempt entity to the contractor is later determined by the director
of revenue to be invalid for any reason and the contractor has accepted the
certificate in good faith, neither the contractor or the exempt entity shall be liable
for the payment of any taxes, interest and penalty due as the result of use of the
invalid exemption certificate. Materials shall be exempt from all state and local
sales and use taxes when purchased by a contractor for the purpose of fabricating
tangible personal property which is used in fulfilling a contract for the purpose
of constructing, repairing or remodeling facilities for the following:
(a) An exempt entity located in this state, if the entity is one of those entities able to issue project exemption certificates in accordance with the provisions of section 144.062; or

(b) An exempt entity located outside the state if the exempt entity is authorized to issue an exemption certificate to contractors in accordance with the provisions of that state's law and the applicable provisions of this section;

(37) All sales or other transfers of tangible personal property to a lessor who leases the property under a lease of one year or longer executed or in effect at the time of the sale or other transfer to an interstate compact agency created pursuant to sections 70.370 to 70.441, RSMo, or sections 238.010 to 238.100, RSMo;

(38) Sales of tickets to any collegiate athletic championship event that is held in a facility owned or operated by a governmental authority or commission, a quasi-governmental agency, a state university or college or by the state or any political subdivision thereof, including a municipality, and that is played on a neutral site and may reasonably be played at a site located outside the state of Missouri. For purposes of this subdivision, "neutral site" means any site that is not located on the campus of a conference member institution participating in the event;

(39) All purchases by a sports complex authority created under section 64.920, RSMo;

(40) Beginning January 1, 2009, but not after January 1, 2015, materials, replacement parts, and equipment purchased for use directly upon, and for the modification, replacement, repair, and maintenance of aircraft, aircraft power plants, and aircraft accessories;

(41) Sales of sporting clays, wobble, skeet, and trap targets to any shooting range or similar places of business for use in the normal course of business and money received by a shooting range or similar places of business from patrons and held by a shooting range or similar place of business for redistribution to patrons at the conclusion of a shooting event.
6 effect upon its passage and approval.
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