

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 629
93RD GENERAL ASSEMBLY

Reported from the Committee on Ways and Means April 6, 2006 with recommendation that House Committee Substitute for Senate Bill No. 629 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

3127L.02C

AN ACT

To repeal sections 144.030 and 144.062, RSMo, and to enact in lieu thereof two new sections relating to sales tax exemptions for transportation.

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

Section A. Sections 144.030 and 144.062, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 144.030 and 144.062, to read as follows:

144.030. 1. There is hereby specifically exempted from the provisions of sections
2 144.010 to 144.525 and from the computation of the tax levied, assessed or payable pursuant to
3 sections 144.010 to 144.525 such retail sales as may be made in commerce between this state and
4 any other state of the United States, or between this state and any foreign country, and any retail
5 sale which the state of Missouri is prohibited from taxing pursuant to the Constitution or laws
6 of the United States of America, and such retail sales of tangible personal property which the
7 general assembly of the state of Missouri is prohibited from taxing or further taxing by the
8 constitution of this state.

9 2. There are also specifically exempted from the provisions of the local sales tax law as
10 defined in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525 and
11 144.600 to 144.761 and from the computation of the tax levied, assessed or payable pursuant to
12 the local sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and sections
13 144.010 to 144.525 and 144.600 to 144.745:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

26 (2) Materials, manufactured goods, machinery and parts which when used in
27 manufacturing, processing, compounding, mining, producing or fabricating become a component
28 part or ingredient of the new personal property resulting from such manufacturing, processing,
29 compounding, mining, producing or fabricating and which new personal property is intended to
30 be sold ultimately for final use or consumption; and materials, including without limitation,
31 gases and manufactured goods, including without limitation, slagging materials and firebrick,
32 which are ultimately consumed in the manufacturing process by blending, reacting or interacting
33 with or by becoming, in whole or in part, component parts or ingredients of steel products
34 intended to be sold ultimately for final use or consumption;

35 (3) Materials, replacement parts and equipment purchased for use directly upon, and for
36 the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock
37 or aircraft engaged as common carriers of persons or property;

38 (4) Replacement machinery, equipment, and parts and the materials and supplies solely
39 required for the installation or construction of such replacement machinery, equipment, and
40 parts, used directly in manufacturing, mining, fabricating or producing a product which is
41 intended to be sold ultimately for final use or consumption; and machinery and equipment, and
42 the materials and supplies required solely for the operation, installation or construction of such
43 machinery and equipment, purchased and used to establish new, or to replace or expand existing,
44 material recovery processing plants in this state. For the purposes of this subdivision, a "material
45 recovery processing plant" means a facility that has as its primary purpose the recovery of
46 materials into a useable product or a different form which is used in producing a new product and
47 shall include a facility or equipment which are used exclusively for the collection of recovered
48 materials for delivery to a material recovery processing plant but shall not include motor vehicles
49 used on highways. For purposes of this section, the terms "motor vehicle" and "highway" shall

50 have the same meaning pursuant to section 301.010, RSMo. Material recovery is not the reuse
51 of materials within a manufacturing process or the use of a product previously recovered. The
52 material recovery processing plant shall qualify under the provisions of this section regardless
53 of ownership of the material being recovered;

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

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

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

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

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

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

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

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

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

87 (14) Machinery, equipment, appliances and devices purchased or leased and used solely
88 for the purpose of preventing, abating or monitoring air pollution, and materials and supplies
89 solely required for the installation, construction or reconstruction of such machinery, equipment,
90 appliances and devices, and so certified as such by the director of the department of natural
91 resources, except that any action by the director pursuant to this subdivision may be appealed to
92 the air conservation commission which may uphold or reverse such action;

93 (15) Machinery, equipment, appliances and devices purchased or leased and used solely
94 for the purpose of preventing, abating or monitoring water pollution, and materials and supplies
95 solely required for the installation, construction or reconstruction of such machinery, equipment,
96 appliances and devices, and so certified as such by the director of the department of natural
97 resources, except that any action by the director pursuant to this subdivision may be appealed to
98 the Missouri clean water commission which may uphold or reverse such action;

99 (16) Tangible personal property purchased by a rural water district;

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

106 (18) All sales of insulin and prosthetic or orthopedic devices as defined on January 1,
107 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of
108 1965, including the items specified in Section 1862(a)(12) of that act, and also specifically
109 including hearing aids and hearing aid supplies and all sales of drugs which may be legally
110 dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to
111 administer those items, including samples and materials used to manufacture samples which may
112 be dispensed by a practitioner authorized to dispense such samples and all sales of medical
113 oxygen, home respiratory equipment and accessories, hospital beds and accessories and
114 ambulatory aids, all sales of manual and powered wheelchairs, stairway lifts, Braille writers,
115 electronic Braille equipment and, if purchased by or on behalf of a person with one or more
116 physical or mental disabilities to enable them to function more independently, all sales of
117 scooters, reading machines, electronic print enlargers and magnifiers, electronic alternative and
118 augmentative communication devices, and items used solely to modify motor vehicles to permit
119 the use of such motor vehicles by individuals with disabilities or sales of over-the-counter or
120 nonprescription drugs to individuals with disabilities;

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

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

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

141 (22) All sales made to any private not-for-profit elementary or secondary school, all sales
142 of feed additives, medications or vaccines administered to livestock or poultry in the production
143 of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for
144 food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber,
145 all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying
146 agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as
147 defined in section 142.028, RSMo, natural gas, propane, and electricity used by an eligible new
148 generation cooperative or an eligible new generation processing entity as defined in section
149 348.432, RSMo, and all sales of farm machinery and equipment, other than airplanes, motor
150 vehicles and trailers. As used in this subdivision, the term "feed additives" means tangible
151 personal property which, when mixed with feed for livestock or poultry, is to be used in the
152 feeding of livestock or poultry. As used in this subdivision, the term "pesticides" includes
153 adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide carriers used
154 to improve or enhance the effect of a pesticide and the foam used to mark the application of
155 pesticides and herbicides for the production of crops, livestock or poultry. As used in this
156 subdivision, the term "farm machinery and equipment" means new or used farm tractors and such

157 other new or used farm machinery and equipment and repair or replacement parts thereon, and
158 supplies and lubricants used exclusively, solely, and directly for producing crops, raising and
159 feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale
160 at retail, including field drain tile, and one-half of each purchaser's purchase of diesel fuel
161 therefor which is:

162 (a) Used exclusively for agricultural purposes;

163 (b) Used on land owned or leased for the purpose of producing farm products; and

164 (c) Used directly in producing farm products to be sold ultimately in processed form or
165 otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold
166 ultimately in processed form at retail;

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

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

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

189 (c) Each person making domestic use purchases of services or property and who uses any
190 portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day
191 of the fourth month following the year of purchase, and without assessment, notice or demand,
192 file a return and pay sales tax on that portion of nondomestic purchases. Each person making

193 nondomestic purchases of services or property and who uses any portion of the services or
194 property so purchased for domestic use, and each person making domestic purchases on behalf
195 of occupants of residential apartments or condominiums through a single or master meter,
196 including service for common areas and facilities and vacant units, under a nonresidential utility
197 service rate classification may, between the first day of the first month and the fifteenth day of
198 the fourth month following the year of purchase, apply for credit or refund to the director of
199 revenue and the director shall give credit or make refund for taxes paid on the domestic use
200 portion of the purchase. The person making such purchases on behalf of occupants of residential
201 apartments or condominiums shall have standing to apply to the director of revenue for such
202 credit or refund;

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

206 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071,
207 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of
208 revenue shall promulgate rules pursuant to chapter 536, RSMo, to eliminate all state and local
209 sales taxes on such excise taxes;

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

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

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

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

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

227 (31) Electrical energy or gas, whether natural, artificial or propane, water, or other
228 utilities which are ultimately consumed in connection with the manufacturing of cellular glass

229 products or in any material recovery processing plant as defined in subdivision (4) of subsection
230 2 of this section;

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

233 (33) Tangible personal property purchased for use or consumption directly or exclusively
234 in the research and development of prescription pharmaceuticals consumed by humans or
235 animals;

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

237 (35) All sales of feed which are developed for and used in the feeding of pets owned by
238 a commercial breeder when such sales are made to a commercial breeder, as defined in section
239 273.325, RSMo, and licensed pursuant to sections 273.325 to 273.357, RSMo;

240 (36) All purchases by a contractor on behalf of an entity located in another state,
241 provided that the entity is authorized to issue a certificate of exemption for purchases to a
242 contractor under the provisions of that state's laws. For purposes of this subdivision, the term
243 "certificate of exemption" shall mean any document evidencing that the entity is exempt from
244 sales and use taxes on purchases pursuant to the laws of the state in which the entity is located.
245 Any contractor making purchases on behalf of such entity shall maintain a copy of the entity's
246 exemption certificate as evidence of the exemption. If the exemption certificate issued by the
247 exempt entity to the contractor is later determined by the director of revenue to be invalid for any
248 reason and the contractor has accepted the certificate in good faith, neither the contractor or the
249 exempt entity shall be liable for the payment of any taxes, interest and penalty due as the result
250 of use of the invalid exemption certificate. Materials shall be exempt from all state and local
251 sales and use taxes when purchased by a contractor for the purpose of fabricating tangible
252 personal property which is used in fulfilling a contract for the purpose of constructing, repairing
253 or remodeling facilities for the following:

254 (a) An exempt entity located in this state, if the entity is one of those entities able to issue
255 project exemption certificates in accordance with the provisions of section 144.062; or

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

259 (37) Tangible personal property purchased for use or consumption directly or exclusively
260 in research or experimentation activities performed by life science companies and so certified
261 as such by the director of the department of economic development or the director's designees;
262 except that, the total amount of exemptions certified pursuant to this section shall not exceed one
263 million three hundred thousand dollars in state and local taxes per fiscal year. For purposes of
264 this subdivision, the term "life science companies" means companies whose primary research

activities are in agriculture, pharmaceuticals, biomedical or food ingredients, and whose North American Industry Classification System (NAICS) Codes fall under industry 541710 (biotech research or development laboratories), 621511 (medical laboratories) or 541940 (veterinary services). The exemption provided by this subdivision shall expire on June 30, 2003;

(38) 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; and

(39) 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.

144.062. 1. With respect to exempt sales at retail of tangible personal property and materials for the purpose of constructing, repairing or remodeling facilities for:

(1) A county, other political subdivision or instrumentality thereof exempt from taxation under subdivision (10) of section 39 of article III of the Constitution of Missouri; or

(2) An organization sales to which are exempt from taxation under the provisions of subdivision (19) of subsection 2 of section 144.030; or

(3) Any institution of higher education supported by public funds or any private not-for-profit institution of higher education, exempt from taxation under subdivision (20) of subsection 2 of section 144.030; or

(4) Any private not-for-profit elementary or secondary school exempt from taxation under subdivision (22) of subsection 2 of section 144.030; or

(5) After June 30, 2007, the department of transportation or the state highways and transportation commission, hereinafter collectively referred to as exempt entities, such exemptions shall be allowed for such purchases if the purchases are related to the entities' exempt functions and activities. In addition, the sales shall not be rendered nonexempt nor shall any material supplier or contractor be obligated to pay, collect or remit sales tax with respect to such purchases made by or on behalf of an exempt entity due to such purchases being billed to or paid for by a contractor or the exempt entity contracting with any entity to render any services in relation to such purchases, including but not limited to selection of materials, ordering, pickup, delivery, approval on delivery, taking of delivery, transportation, storage, assumption of risk of loss to materials or providing warranties on materials as specified by contract, use of materials or other purchases for construction of the building or other facility, providing labor, management

23 services, administrative services, design or technical services or advice to the exempt entity,
24 whether or not the contractor or other entity exercises dominion or control in any other manner
25 over the materials in conjunction with services or labor provided to the exempt entity.

26 2. When any exempt entity contracts for the purpose of constructing, repairing or
27 remodeling facilities, and purchases of tangible personal property and materials to be
28 incorporated into or consumed in the construction of the project are to be made on a tax-exempt
29 basis, such entity shall furnish to the contractor an exemption certificate authorizing such
30 purchases for the construction, repair or remodeling project. The form and content of such
31 project exemption certificate shall be approved by the director of revenue. The project
32 exemption certificate shall include but not be limited to:

33 (1) The exempt entity's name, address, Missouri tax identification number and signature
34 of authorized representative;

35 (2) The project location, description, and unique identification number;

36 (3) The date the contract is entered into, which is the earliest date materials may be
37 purchased for the project on a tax-exempt basis;

38 (4) The estimated project completion date; and

39 (5) The certificate expiration date.

40 Such certificate is renewable for a given project at the option of the exempt entity, only for the
41 purpose of revising the certificate expiration date as necessary to complete the project.

42 3. The contractor shall furnish the certificate prescribed in subsection 2 of this section
43 to all subcontractors, and any contractor purchasing materials shall present such certificate to all
44 material suppliers as authorization to purchase, on behalf of the exempt entity, all tangible
45 personal property and materials to be incorporated into or consumed in the construction of that
46 project and no other on a tax-exempt basis. Such suppliers shall execute to the purchasing
47 contractor invoices bearing the name of the exempt entity and the project identification number.
48 Nothing in this section shall be deemed to exempt the purchase of any construction machinery,
49 equipment or tools used in constructing, repairing or remodeling facilities for the exempt entity.
50 All invoices for all personal property and materials purchased under a project exemption
51 certificate shall be retained by the purchasing contractor for a period of five years and shall be
52 subject to audit by the director of revenue.

53 4. Any excess resalable tangible personal property or materials which were purchased
54 for the project by a contractor under a project exemption certificate but which were not
55 incorporated into or consumed in the construction of the project shall either be returned to the
56 supplier for credit or the appropriate sales or use tax on such excess property or materials shall
57 be reported on a return and paid by such contractor not later than the due date of the contractor's

58 Missouri sales or use tax return following the month in which it was determined that the
59 materials were not to be used in the project.

60 5. No contractor or material supplier shall, upon audit, be required to pay tax on tangible
61 personal property and materials incorporated into or consumed in the construction of the project,
62 due to the failure of the exempt entity to revise the certificate expiration date as necessary to
63 complete any work required by the contract. If it is determined that tax is owed on such property
64 and materials due to the failure of the exempt entity to revise such certificate expiration date, the
65 exempt entity shall be liable for the tax owed.

66 6. If an entity issues exemption certificates for the purchase of tangible personal property
67 and materials which are incorporated into or consumed in the construction of its project and such
68 entity is found not to have had the authority granted by this section to issue such exemption
69 certificates, then such entity shall be liable for the tax owed on such personal property and
70 materials. In addition, if an entity which does have the authority granted by this section to issue
71 exemption certificates issues such certificates for the purchase of tangible personal property and
72 materials which are incorporated into or consumed in the construction of a project, or part of a
73 project, which is found not to be related to such entity's exempt functions and activities, then
74 such entity shall be liable for the tax owed on such personal property and materials.

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