

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE FOR

SENATE BILL NO. 928

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAGER.

Offered March 29, 2010.

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TERRY L. SPIELER, Secretary.

4870S.04P

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Section A. Section 144.030, RSMo, is repealed and two new sections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

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

6 (1) Subject to a tax in this or any other state;

7 (2) For resale;

8 (3) Excluded from tax under this chapter;

9 (4) Subject to tax but exempt under this chapter; or

10 (5) Exempt from the sales tax laws of another state, if the
11 subsequent sale is in such other state.

12 The purchase of tangible personal property by a taxpayer shall not be
13 deemed to be for resale if such property is used or consumed by the
14 taxpayer in providing a service on which tax is not imposed by
15 subsection 1 of section 144.020, except purchases made in fulfillment of

16 any obligation under a defense contract with the United States
17 government.

18 2. For purposes of subdivision (2) of subsection 1 of section
19 144.020, a place of amusement, entertainment or recreation, including
20 games or athletic events, shall remit tax on the amount paid for
21 admissions or seating accommodations, or fees paid to, or in such place
22 of amusement, entertainment or recreation. Any subsequent sale of
23 such admissions or seating accommodations shall not be subject to tax
24 if the initial sale was an arms length transaction for fair market value
25 with an unaffiliated entity. If the sale of such admissions or seating
26 accommodations is exempt or excluded from payment of sales and use
27 taxes, the provisions of this subsection shall not require the place of
28 amusement, entertainment, or recreation to remit tax on that sale.

29 3. For purposes of subdivision (6) of subsection 1 of section
30 144.020, a hotel, motel, tavern, inn, restaurant, eating house, drugstore,
31 dining car, tourist cabin, tourist camp, or other place in which rooms,
32 meals, or drinks are regularly served to the public shall remit tax on
33 the amount of sales or charges for all rooms, meals, and drinks
34 furnished at such hotel, motel, tavern, inn, restaurant, eating house,
35 drugstore, dining car, tourist cabin, tourist camp, or other place in
36 which rooms, meals, or drinks are regularly served to the public. Any
37 subsequent sale of such rooms, meals, or drinks shall not be subject to
38 tax if the initial sale was an arms length transaction for fair market
39 value with an unaffiliated entity. If the sale of such rooms, meals, or
40 drinks is exempt or excluded from payment of sales and use taxes, the
41 provisions of this subsection shall not require the hotel, motel, tavern,
42 inn, restaurant, eating house, drugstore, dining car, tourist cabin,
43 tourist camp, or other place in which rooms, meals, or drinks are
44 regularly served to the public to remit tax on that sale.

45 4. The provisions of this section are intended to reject and
46 abrogate earlier case law interpretations of the state's sales and use tax
47 law with regard to sales for resale as extended in *Music City Centre*
48 *Management, LLC v. Director of Revenue*, 295 S.W.3d 465, (Mo. 2009)
49 and *ICC Management, Inc. v. Director of Revenue*, 290 S.W.3d 699, (Mo.
50 2009).

144.030. 1. There is hereby specifically exempted from the provisions of
2 sections 144.010 to 144.525 and from the computation of the tax levied, assessed

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

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

16 (1) Motor fuel or special fuel subject to an excise tax of this state, unless
17 all or part of such excise tax is refunded pursuant to section 142.824, RSMo; or
18 upon the sale at retail of fuel to be consumed in manufacturing or creating gas,
19 power, steam, electrical current or in furnishing water to be sold ultimately at
20 retail; or feed for livestock or poultry; or grain to be converted into foodstuffs
21 which are to be sold ultimately in processed form at retail; or seed, limestone or
22 fertilizer which is to be used for seeding, liming or fertilizing crops which when
23 harvested will be sold at retail or will be fed to livestock or poultry to be sold
24 ultimately in processed form at retail; economic poisons registered pursuant to
25 the provisions of the Missouri pesticide registration law (sections 281.220 to
26 281.310, RSMo) which are to be used in connection with the growth or production
27 of crops, fruit trees or orchards applied before, during, or after planting, the crop
28 of which when harvested will be sold at retail or will be converted into foodstuffs
29 which are to be sold ultimately in processed form at retail;

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

39 component parts or ingredients of steel products intended to be sold ultimately
40 for final use or consumption;

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

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

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

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

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

74 (8) Newsprint, ink, computers, photosensitive paper and film, toner,

75 printing plates and other machinery, equipment, replacement parts and supplies
76 used in producing newspapers published for dissemination of news to the general
77 public;

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

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

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

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

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

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

108 (15) Machinery, equipment, appliances and devices purchased or leased
109 and used solely for the purpose of preventing, abating or monitoring water
110 pollution, and materials and supplies solely required for the installation,

111 construction or reconstruction of such machinery, equipment, appliances and
112 devices;

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

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

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

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

142 (20) All sales of aircraft to common carriers for storage or for use in
143 interstate commerce and all sales made by or to not-for-profit civic, social, service
144 or fraternal organizations, including fraternal organizations which have been
145 declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the
146 1986 Internal Revenue Code, as amended, in their civic or charitable functions

147 and activities and all sales made to eleemosynary and penal institutions and
148 industries of the state, and all sales made to any private not-for-profit institution
149 of higher education not otherwise excluded pursuant to subdivision (19) of this
150 subsection or any institution of higher education supported by public funds, and
151 all sales made to a state relief agency in the exercise of relief functions and
152 activities;

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

161 (22) All sales made to any private not-for-profit elementary or secondary
162 school, all sales of feed additives, medications or vaccines administered to
163 livestock or poultry in the production of food or fiber, all sales of pesticides used
164 in the production of crops, livestock or poultry for food or fiber, all sales of
165 bedding used in the production of livestock or poultry for food or fiber, all sales
166 of propane or natural gas, electricity or diesel fuel used exclusively for drying
167 agricultural crops, natural gas used in the primary manufacture or processing of
168 fuel ethanol as defined in section 142.028, RSMo, natural gas, propane, and
169 electricity used by an eligible new generation cooperative or an eligible new
170 generation processing entity as defined in section 348.432, RSMo, and all sales
171 of farm machinery and equipment, other than airplanes, motor vehicles and
172 trailers. As used in this subdivision, the term "feed additives" means tangible
173 personal property which, when mixed with feed for livestock or poultry, is to be
174 used in the feeding of livestock or poultry. As used in this subdivision, the term
175 "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and
176 other assorted pesticide carriers used to improve or enhance the effect of a
177 pesticide and the foam used to mark the application of pesticides and herbicides
178 for the production of crops, livestock or poultry. As used in this subdivision, the
179 term "farm machinery and equipment" means new or used farm tractors and such
180 other new or used farm machinery and equipment and repair or replacement
181 parts thereon, and supplies and lubricants used exclusively, solely, and directly
182 for producing crops, raising and feeding livestock, fish, poultry, pheasants,

183 chukar, quail, or for producing milk for ultimate sale at retail, including field
184 drain tile, and one-half of each purchaser's purchase of diesel fuel therefor which
185 is:

186 (a) Used exclusively for agricultural purposes;

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

189 (c) Used directly in producing farm products to be sold ultimately in
190 processed form or otherwise at retail or in producing farm products to be fed to
191 livestock or poultry to be sold ultimately in processed form at retail;

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

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

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

217 (c) Each person making domestic use purchases of services or property
218 and who uses any portion of the services or property so purchased for a

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

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

237 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041,
238 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United
239 States Code. The director of revenue shall promulgate rules pursuant to chapter
240 536, RSMo, to eliminate all state and local sales taxes on such excise taxes;

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

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

251 (28) Computers, computer software and computer security systems
252 purchased for use by architectural or engineering firms headquartered in this
253 state. For the purposes of this subdivision, "headquartered in this state" means
254 the office for the administrative management of at least four integrated facilities

255 operated by the taxpayer is located in the state of Missouri;

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

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

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

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

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

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

273 (35) All sales of feed which are developed for and used in the feeding of
274 pets owned by a commercial breeder when such sales are made to a commercial
275 breeder, as defined in section 273.325, RSMo, and licensed pursuant to sections
276 273.325 to 273.357, RSMo;

277 (36) All purchases by a contractor on behalf of an entity located in another
278 state, provided that the entity is authorized to issue a certificate of exemption for
279 purchases to a contractor under the provisions of that state's laws. For purposes
280 of this subdivision, the term "certificate of exemption" shall mean any document
281 evidencing that the entity is exempt from sales and use taxes on purchases
282 pursuant to the laws of the state in which the entity is located. Any contractor
283 making purchases on behalf of such entity shall maintain a copy of the entity's
284 exemption certificate as evidence of the exemption. If the exemption certificate
285 issued by the exempt entity to the contractor is later determined by the director
286 of revenue to be invalid for any reason and the contractor has accepted the
287 certificate in good faith, neither the contractor or the exempt entity shall be liable
288 for the payment of any taxes, interest and penalty due as the result of use of the
289 invalid exemption certificate. Materials shall be exempt from all state and local
290 sales and use taxes when purchased by a contractor for the purpose of fabricating

291 tangible personal property which is used in fulfilling a contract for the purpose
292 of constructing, repairing or remodeling facilities for the following:

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

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

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

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

312 (39) All purchases by a sports complex authority created under section
313 64.920, RSMo;

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

318 **(41) Sales of sporting clays, wobble, skeet, and trap targets to**
319 **any shooting range or similar places of business for use in the normal**
320 **course of business and money received by a shooting range or similar**
321 **places of business from patrons and held by a shooting range or similar**
322 **place of business for redistribution to patrons at the conclusion of a**
323 **shooting event.**

Section B. Because of the need to ensure the proper application of
2 Missouri sales tax law with regard to sales for resale, section A of this act is
3 deemed necessary for the immediate preservation of the public health, welfare,

4 peace and safety, and is hereby declared to be an emergency act within the
5 meaning of the constitution, and section A of this act shall be in full force and
6 effect upon its passage and approval.

✓

Unofficial

Bill

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