

FIRST REGULAR SESSION

SENATE BILL NO. 174

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PARSON.

Read 1st time January 17, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1031S.011

AN ACT

To repeal sections 144.010, 144.030, and 144.605, RSMo, and to enact in lieu thereof three new sections relating to the determination of what are business activities within this state.

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

Section A. Sections 144.010, 144.030, and 144.605, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 144.010,
3 144.030, and 144.605, to read as follows:

144.010. 1. The following words, terms, and phrases when used in
2 sections 144.010 to 144.525 have the meanings ascribed to them in this section,
3 except when the context indicates a different meaning:

4 (1) "Admission" includes seats and tables, reserved or otherwise, and
5 other similar accommodations and charges made therefor and amount paid for
6 admission, exclusive of any admission tax imposed by the federal government or
7 by sections 144.010 to 144.525;

8 (2) "Business" includes any activity engaged in by any person, or caused
9 to be engaged in by him, with the object of gain, benefit or advantage, either
10 direct or indirect, and the classification of which business is of such character as
11 to be subject to the terms of sections 144.010 to 144.525. **A person is "engaging**
12 **in business" in this state for purposes of sections 144.010 to 144.525 if**
13 **such person "engages in business in this state" or "maintains a place of**
14 **business in this state" pursuant to section 144.605.** The isolated or
15 occasional sale of tangible personal property, service, substance, or thing, by a
16 person not engaged in such business, does not constitute engaging in business
17 within the meaning of sections 144.010 to 144.525 unless the total amount of the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 gross receipts from such sales, exclusive of receipts from the sale of tangible
19 personal property by persons which property is sold in the course of the partial
20 or complete liquidation of a household, farm or nonbusiness enterprise, exceeds
21 three thousand dollars in any calendar year. The provisions of this subdivision
22 shall not be construed to make any sale of property which is exempt from sales
23 tax or use tax on June 1, 1977, subject to that tax thereafter;

24 (3) "Captive wildlife", includes but is not limited to exotic partridges, gray
25 partridge, northern bobwhite quail, ring-necked pheasant, captive waterfowl,
26 captive white-tailed deer, captive elk, and captive furbearers held under permit
27 issued by the Missouri department of conservation for hunting purposes. The
28 provisions of this subdivision shall not apply to sales tax on a harvested animal;

29 (4) "Gross receipts", except as provided in section 144.012, means the total
30 amount of the sale price of the sales at retail including any services other than
31 charges incident to the extension of credit that are a part of such sales made by
32 the businesses herein referred to, capable of being valued in money, whether
33 received in money or otherwise; except that, the term "gross receipts" shall not
34 include the sale price of property returned by customers when the full sale price
35 thereof is refunded either in cash or by credit. In determining any tax due under
36 sections 144.010 to 144.525 on the gross receipts, charges incident to the
37 extension of credit shall be specifically exempted. For the purposes of sections
38 144.010 to 144.525 the total amount of the sale price above mentioned shall be
39 deemed to be the amount received. It shall also include the lease or rental
40 consideration where the right to continuous possession or use of any article of
41 tangible personal property is granted under a lease or contract and such transfer
42 of possession would be taxable if outright sale were made and, in such cases, the
43 same shall be taxable as if outright sale were made and considered as a sale of
44 such article, and the tax shall be computed and paid by the lessee upon the
45 rentals paid;

46 (5) "Livestock", cattle, calves, sheep, swine, ratite birds, including but not
47 limited to, ostrich and emu, aquatic products as defined in section 277.024,
48 llamas, alpaca, buffalo, elk documented as obtained from a legal source and not
49 from the wild, goats, horses, other equine, or rabbits raised in confinement for
50 human consumption;

51 (6) "Motor vehicle leasing company" shall be a company obtaining a
52 permit from the director of revenue to operate as a motor vehicle leasing
53 company. Not all persons renting or leasing trailers or motor vehicles need to

54 obtain such a permit; however, no person failing to obtain such a permit may
55 avail itself of the optional tax provisions of subsection 5 of section 144.070, as
56 hereinafter provided;

57 (7) "Person" includes any individual, firm, copartnership, joint adventure,
58 association, corporation, municipal or private, and whether organized for profit
59 or not, state, county, political subdivision, state department, commission, board,
60 bureau or agency, except the state transportation department, estate, trust,
61 business trust, receiver or trustee appointed by the state or federal court,
62 syndicate, or any other group or combination acting as a unit, and the plural as
63 well as the singular number;

64 (8) "Purchaser" means a person who purchases tangible personal property
65 or to whom are rendered services, receipts from which are taxable under sections
66 144.010 to 144.525;

67 (9) "Research or experimentation activities" are the development of an
68 experimental or pilot model, plant process, formula, invention or similar property,
69 and the improvement of existing property of such type. Research or
70 experimentation activities do not include activities such as ordinary testing or
71 inspection of materials or products for quality control, efficiency surveys,
72 advertising promotions or research in connection with literary, historical or
73 similar projects;

74 (10) "Sale" or "sales" includes installment and credit sales, and the
75 exchange of properties as well as the sale thereof for money, every closed
76 transaction constituting a sale, and means any transfer, exchange or barter,
77 conditional or otherwise, in any manner or by any means whatsoever, of tangible
78 personal property for valuable consideration and the rendering, furnishing or
79 selling for a valuable consideration any of the substances, things and services
80 herein designated and defined as taxable under the terms of sections 144.010 to
81 144.525;

82 (11) "Sale at retail" means any transfer made by any person engaged in
83 business as defined herein of the ownership of, or title to, tangible personal
84 property to the purchaser, for use or consumption and not for resale in any form
85 as tangible personal property, for a valuable consideration; except that, for the
86 purposes of sections 144.010 to 144.525 and the tax imposed thereby: (I)
87 purchases of tangible personal property made by duly licensed physicians,
88 dentists, optometrists and veterinarians and used in the practice of their
89 professions shall be deemed to be purchases for use or consumption and not for

90 resale; and (ii) the selling of computer printouts, computer output or microfilm
91 or microfiche and computer-assisted photo compositions to a purchaser to enable
92 the purchaser to obtain for his or her own use the desired information contained
93 in such computer printouts, computer output on microfilm or microfiche and
94 computer-assisted photo compositions shall be considered as the sale of a service
95 and not as the sale of tangible personal property. Where necessary to conform to
96 the context of sections 144.010 to 144.525 and the tax imposed thereby, the term
97 "sale at retail" shall be construed to embrace:

98 (a) Sales of admission tickets, cash admissions, charges and fees to or in
99 places of amusement, entertainment and recreation, games and athletic events;

100 (b) Sales of electricity, electrical current, water and gas, natural or
101 artificial, to domestic, commercial or industrial consumers;

102 (c) Sales of local and long distance telecommunications service to
103 telecommunications subscribers and to others through equipment of
104 telecommunications subscribers for the transmission of messages and
105 conversations, and the sale, rental or leasing of all equipment or services
106 pertaining or incidental thereto;

107 (d) Sales of service for transmission of messages by telegraph companies;

108 (e) Sales or charges for all rooms, meals and drinks furnished at any
109 hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist
110 camp, tourist cabin, or other place in which rooms, meals or drinks are regularly
111 served to the public;

112 (f) Sales of tickets by every person operating a railroad, sleeping car,
113 dining car, express car, boat, airplane, and such buses and trucks as are licensed
114 by the division of motor carrier and railroad safety of the department of economic
115 development of Missouri, engaged in the transportation of persons for hire;

116 (12) "Seller" means a person selling or furnishing tangible personal
117 property or rendering services, on the receipts from which a tax is imposed
118 pursuant to section 144.020;

119 (13) The noun "tax" means either the tax payable by the purchaser of a
120 commodity or service subject to tax, or the aggregate amount of taxes due from
121 the vendor of such commodities or services during the period for which he or she
122 is required to report his or her collections, as the context may require;

123 (14) "Telecommunications service", for the purpose of this chapter, the
124 transmission of information by wire, radio, optical cable, coaxial cable, electronic
125 impulses, or other similar means. As used in this definition, "information" means

126 knowledge or intelligence represented by any form of writing, signs, signals,
127 pictures, sounds, or any other symbols. Telecommunications service does not
128 include the following if such services are separately stated on the customer's bill
129 or on records of the seller maintained in the ordinary course of business:

130 (a) Access to the internet, access to interactive computer services or
131 electronic publishing services, except the amount paid for the telecommunications
132 service used to provide such access;

133 (b) Answering services and one-way paging services;

134 (c) Private mobile radio services which are not two-way commercial mobile
135 radio services such as wireless telephone, personal communications services or
136 enhanced specialized mobile radio services as defined pursuant to federal law; or

137 (d) Cable or satellite television or music services; and

138 (15) "Product which is intended to be sold ultimately for final use or
139 consumption" means tangible personal property, or any service that is subject to
140 state or local sales or use taxes, or any tax that is substantially equivalent
141 thereto, in this state or any other state.

142 2. For purposes of the taxes imposed under sections 144.010 to 144.525,
143 and any other provisions of law pertaining to sales or use taxes which incorporate
144 the provisions of sections 144.010 to 144.525 by reference, the term
145 "manufactured homes" shall have the same meaning given it in section 700.010.

146 3. Sections 144.010 to 144.525 may be known and quoted as the "Sales
147 Tax Law".

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, section 238.235, and sections 144.010
12 to 144.525 and 144.600 to 144.761 and from the computation of the tax levied,
13 assessed or payable pursuant to the local sales tax law as defined in section
14 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to 144.745:

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

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

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

44 (4) Motor vehicles registered in excess of fifty-four thousand pounds, and
45 the trailers pulled by such motor vehicles, that are actually used in the normal
46 course of business to haul property on the public highways of the state, and that
47 are capable of hauling loads commensurate with the motor vehicle's registered
48 weight; and the materials, replacement parts, and equipment purchased for use
49 directly upon, and for the repair and maintenance or manufacture of such
50 vehicles. For purposes of this subdivision "motor vehicle" and "public highway"

51 shall have the meaning as ascribed in section 390.020;

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

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

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

80 (8) Animals or poultry used for breeding or feeding purposes, or captive
81 wildlife;

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

86 (10) The rentals of films, records or any type of sound or picture

87 transcriptions for public commercial display;

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

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

94 (13) Electrical energy used in the actual primary manufacture, processing,
95 compounding, mining or producing of a product, or electrical energy used in the
96 actual secondary processing or fabricating of the product, or a material recovery
97 processing plant as defined in subdivision (5) of this subsection, in facilities
98 owned or leased by the taxpayer, if the total cost of electrical energy so used
99 exceeds ten percent of the total cost of production, either primary or secondary,
100 exclusive of the cost of electrical energy so used or if the raw materials used in
101 such processing contain at least twenty-five percent recovered materials as
102 defined in section 260.200. There shall be a rebuttable presumption that the raw
103 materials used in the primary manufacture of automobiles contain at least
104 twenty-five percent recovered materials. For purposes of this subdivision,
105 "processing" means any mode of treatment, act or series of acts performed upon
106 materials to transform and reduce them to a different state or thing, including
107 treatment necessary to maintain or preserve such processing by the producer at
108 the production facility;

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

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

116 (16) Machinery, equipment, appliances and devices purchased or leased
117 and used solely for the purpose of preventing, abating or monitoring water
118 pollution, and materials and supplies solely required for the installation,
119 construction or reconstruction of such machinery, equipment, appliances and
120 devices;

121 (17) Tangible personal property purchased by a rural water district;

122 (18) All amounts paid or charged for admission or participation or other

123 fees paid by or other charges to individuals in or for any place of amusement,
124 entertainment or recreation, games or athletic events, including museums, fairs,
125 zoos and planetariums, owned or operated by a municipality or other political
126 subdivision where all the proceeds derived therefrom benefit the municipality or
127 other political subdivision and do not inure to any private person, firm, or
128 corporation;

129 (19) All sales of insulin and prosthetic or orthopedic devices as defined on
130 January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the
131 Social Security Act of 1965, including the items specified in Section 1862(a)(12)
132 of that act, and also specifically including hearing aids and hearing aid supplies
133 and all sales of drugs which may be legally dispensed by a licensed pharmacist
134 only upon a lawful prescription of a practitioner licensed to administer those
135 items, including samples and materials used to manufacture samples which may
136 be dispensed by a practitioner authorized to dispense such samples and all sales
137 or rental of medical oxygen, home respiratory equipment and accessories, hospital
138 beds and accessories and ambulatory aids, all sales or rental of manual and
139 powered wheelchairs, stairway lifts, Braille writers, electronic Braille equipment
140 and, if purchased or rented by or on behalf of a person with one or more physical
141 or mental disabilities to enable them to function more independently, all sales or
142 rental of scooters, reading machines, electronic print enlargers and magnifiers,
143 electronic alternative and augmentative communication devices, and items used
144 solely to modify motor vehicles to permit the use of such motor vehicles by
145 individuals with disabilities or sales of over-the-counter or nonprescription drugs
146 to individuals with disabilities, and drugs required by the Food and Drug
147 Administration to meet the over-the-counter drug product labeling requirements
148 in 21 CFR 201.66, or its successor, as prescribed by a health care practitioner
149 licensed to prescribe;

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

154 (21) All sales of aircraft to common carriers for storage or for use in
155 interstate commerce and all sales made by or to not-for-profit civic, social, service
156 or fraternal organizations, including fraternal organizations which have been
157 declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the
158 1986 Internal Revenue Code, as amended, in their civic or charitable functions

159 and activities and all sales made to eleemosynary and penal institutions and
160 industries of the state, and all sales made to any private not-for-profit institution
161 of higher education not otherwise excluded pursuant to subdivision (20) of this
162 subsection or any institution of higher education supported by public funds, and
163 all sales made to a state relief agency in the exercise of relief functions and
164 activities;

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

173 (23) All sales made to any private not-for-profit elementary or secondary
174 school, all sales of feed additives, medications or vaccines administered to
175 livestock or poultry in the production of food or fiber, all sales of pesticides used
176 in the production of crops, livestock or poultry for food or fiber, all sales of
177 bedding used in the production of livestock or poultry for food or fiber, all sales
178 of propane or natural gas, electricity or diesel fuel used exclusively for drying
179 agricultural crops, natural gas used in the primary manufacture or processing of
180 fuel ethanol as defined in section 142.028, natural gas, propane, and electricity
181 used by an eligible new generation cooperative or an eligible new generation
182 processing entity as defined in section 348.432, and all sales of farm machinery
183 and equipment, other than airplanes, motor vehicles and trailers, and any freight
184 charges on any exempt item. As used in this subdivision, the term "feed
185 additives" means tangible personal property which, when mixed with feed for
186 livestock or poultry, is to be used in the feeding of livestock or poultry. As used
187 in this subdivision, the term "pesticides" includes adjuvants such as crop oils,
188 surfactants, wetting agents and other assorted pesticide carriers used to improve
189 or enhance the effect of a pesticide and the foam used to mark the application of
190 pesticides and herbicides for the production of crops, livestock or poultry. As
191 used in this subdivision, the term "farm machinery and equipment" means new
192 or used farm tractors and such other new or used farm machinery and equipment
193 and repair or replacement parts thereon and any accessories for and upgrades to
194 such farm machinery and equipment, rotary mowers used exclusively for

195 agricultural purposes, and supplies and lubricants used exclusively, solely, and
196 directly for producing crops, raising and feeding livestock, fish, poultry,
197 pheasants, chukar, quail, or for producing milk for ultimate sale at retail,
198 including field drain tile, and one-half of each purchaser's purchase of diesel fuel
199 therefor which is:

200 (a) Used exclusively for agricultural purposes;

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

203 (c) Used directly in producing farm products to be sold ultimately in
204 processed form or otherwise at retail or in producing farm products to be fed to
205 livestock or poultry to be sold ultimately in processed form at retail;

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

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

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

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

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

251 (26) Excise taxes, collected on sales at retail, imposed by Sections 4041,
252 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United
253 States Code. The director of revenue shall promulgate rules pursuant to chapter
254 536 to eliminate all state and local sales taxes on such excise taxes;

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

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

264 (29) Computers, computer software and computer security systems
265 purchased for use by architectural or engineering firms headquartered in this
266 state. For the purposes of this subdivision, "headquartered in this state" means

267 the office for the administrative management of at least four integrated facilities
268 operated by the taxpayer is located in the state of Missouri;

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

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

274 (32) Electrical energy or gas, whether natural, artificial or propane, water,
275 or other utilities which are ultimately consumed in connection with the
276 manufacturing of cellular glass products or in any material recovery processing
277 plant as defined in subdivision (5) of this subsection;

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

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

285 (35) All sales of grain bins for storage of grain for resale;

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

290 (37) All purchases by a contractor on behalf of an entity located in another
291 state, provided that the entity is authorized to issue a certificate of exemption for
292 purchases to a contractor under the provisions of that state's laws. For purposes
293 of this subdivision, the term "certificate of exemption" shall mean any document
294 evidencing that the entity is exempt from sales and use taxes on purchases
295 pursuant to the laws of the state in which the entity is located. Any contractor
296 making purchases on behalf of such entity shall maintain a copy of the entity's
297 exemption certificate as evidence of the exemption. If the exemption certificate
298 issued by the exempt entity to the contractor is later determined by the director
299 of revenue to be invalid for any reason and the contractor has accepted the
300 certificate in good faith, neither the contractor or the exempt entity shall be liable
301 for the payment of any taxes, interest and penalty due as the result of use of the
302 invalid exemption certificate. Materials shall be exempt from all state and local

303 sales and use taxes when purchased by a contractor for the purpose of fabricating
304 tangible personal property which is used in fulfilling a contract for the purpose
305 of constructing, repairing or remodeling facilities for the following:

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

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

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

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

324 (40) All purchases by a sports complex authority created under section
325 64.920, and all sales of utilities by such authority at the authority's cost that are
326 consumed in connection with the operation of a sports complex leased to a
327 professional sports team;

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

332 (42) Sales of sporting clays, wobble, skeet, and trap targets to any
333 shooting range or similar places of business for use in the normal course of
334 business and money received by a shooting range or similar places of business
335 from patrons and held by a shooting range or similar place of business for
336 redistribution to patrons at the conclusion of a shooting event.

337 **3. Any ruling, agreement, or contract, whether written or oral,**
338 **express or implied, between a person and this state's executive branch,**

339 or any other state agency or department, stating, agreeing, or ruling
340 that such person is not required to collect sales and use tax in this
341 state despite the presence of a warehouse, distribution center, or
342 fulfillment center in this state that is owned or operated by the person
343 or an affiliated person shall be null and void unless it is specifically
344 approved by a majority vote of each of the houses of the general
345 assembly. For purposes of this subsection, an "affiliated person" means
346 any person that is a member of the same "controlled group of
347 corporations" as defined in Section 1563(a) of the Internal Revenue
348 Code as the vendor or any other entity that, notwithstanding its form
349 of organization, bears the same ownership relationship to the vendor
350 as a corporation that is a member of the same "controlled group of
351 corporations" as defined in Section 1563(a) of the Internal Revenue
352 Code.

144.605. The following words and phrases as used in sections 144.600 to
2 144.745 mean and include:

3 (1) "Calendar quarter", the period of three consecutive calendar months
4 ending on March thirty-first, June thirtieth, September thirtieth or December
5 thirty-first;

6 (2) "Engages in business activities within this state" includes:

7 (a) [Purposefully or systematically exploiting the market provided by this
8 state by any media-assisted, media-facilitated, or media-solicited means,
9 including, but not limited to, direct mail advertising, distribution of catalogs,
10 computer-assisted shopping, telephone, television, radio, or other electronic
11 media, or magazine or newspaper advertisements, or other media; or

12 (b) Being owned or controlled by the same interests which own or control
13 any seller engaged in the same or similar line of business in this state; or

14 (c) Maintaining or having a franchisee or licensee operating under the
15 seller's trade name in this state if the franchisee or licensee is required to collect
16 sales tax pursuant to sections 144.010 to 144.525; [or]

17 [(d)] (b) Soliciting sales or taking orders by sales agents or traveling
18 representatives;

19 (c) A vendor is presumed to "engage in business activities within
20 this state" if any person, other than a common carrier acting in its
21 capacity as such, that has substantial nexus with this state:

22 a. Sells a similar line of products as the vendor and does so

23 under the same or a similar business name;

24 b. Maintains an office, distribution facility, warehouse, or
25 storage place, or similar place of business in the state to facilitate the
26 delivery of property or services sold by the vendor to the vendor's
27 customers;

28 c. Delivers, installs, assembles, or performs maintenance services
29 for the vendor's customers within the state;

30 d. Facilitates the vendor's delivery of property to customers in
31 the state by allowing the vendor's customers to pick up property sold
32 by the vendor at an office, distribution facility, warehouse, storage
33 place, or similar place of business maintained by the person in the
34 state; or

35 e. Conducts any other activities in the state that are significantly
36 associated with the vendor's ability to establish and maintain a market
37 in the state for the sales;

38 (d) The presumption in paragraph (c) may be rebutted by
39 demonstrating that the person's activities in the state are not
40 significantly associated with the vendor's ability to establish or
41 maintain a market in this state for the vendor's sales;

42 (e) Notwithstanding paragraph (c), a vendor shall be presumed
43 to engage in business activities within this state if the vendor enters
44 into an agreement with one or more residents of this state under which
45 the resident, for a commission or other consideration, directly or
46 indirectly refers potential customers, whether by a link on an internet
47 website, an in-person oral presentation, telemarketing, or otherwise, to
48 the vendor, if the cumulative gross receipts from sales by the vendor
49 to customers in the stat who are referred to the vendor by all residents
50 with this type of an agreement with the vendor is in excess of ten
51 thousand dollars during the preceding twelve months;

52 (f) The presumption in paragraph (e) may be rebutted by
53 submitting proof that the residents with whom the vendor has an
54 agreement did not engage in any activity within the state that was
55 significantly associated with the vendor's ability to establish or
56 maintain the vendor's market in the state during the preceding twelve
57 months. Such proof may consist of sworn written statements from all
58 of the residents with whom the vendor has an agreement stating that
59 they did not engage in any solicitation in the state on behalf of the

60 **vendor during the preceding year provided that such statements were**
61 **provided and obtained in good faith;**

62 (3) "Maintains a place of business in this state" includes maintaining,
63 occupying, or using, permanently or temporarily, directly or indirectly, [or
64 through a subsidiary, or agent,] by whatever name called, an office, place of
65 distribution, sales or sample room or place, warehouse or storage place, or other
66 place of business **in this state, whether owned or operated by the vendor**
67 **or by any other person other than a common carrier acting in its**
68 **capacity as such;**

69 (4) "Person", any individual, firm, copartnership, joint venture,
70 association, corporation, municipal or private, and whether organized for profit
71 or not, state, county, political subdivision, state department, commission, board,
72 bureau or agency, except the state transportation department, estate, trust,
73 business trust, receiver or trustee appointed by the state or federal court,
74 syndicate, or any other group or combination acting as a unit, and the plural as
75 well as the singular number;

76 (5) "Purchase", the acquisition of the ownership of, or title to, tangible
77 personal property, through a sale, as defined herein, for the purpose of storage,
78 use or consumption in this state;

79 (6) "Purchaser", any person who is the recipient for a valuable
80 consideration of any sale of tangible personal property acquired for use, storage
81 or consumption in this state;

82 (7) "Sale", any transfer, barter or exchange of the title or ownership of
83 tangible personal property, or the right to use, store or consume the same, for a
84 consideration paid or to be paid, and any transaction whether called leases,
85 rentals, bailments, loans, conditional sales or otherwise, and notwithstanding
86 that the title or possession of the property or both is retained for security. For
87 the purpose of this law the place of delivery of the property to the purchaser,
88 user, storer or consumer is deemed to be the place of sale, whether the delivery
89 be by the vendor or by common carriers, private contractors, mails, express,
90 agents, salesmen, solicitors, hawkers, representatives, consignors, peddlers,
91 canvassers or otherwise;

92 (8) "Sales price", the consideration including the charges for services,
93 except charges incident to the extension of credit, paid or given, or contracted to
94 be paid or given, by the purchaser to the vendor for the tangible personal
95 property, including any services that are a part of the sale, valued in money,

96 whether paid in money or otherwise, and any amount for which credit is given to
97 the purchaser by the vendor, without any deduction therefrom on account of the
98 cost of the property sold, the cost of materials used, labor or service cost, losses
99 or any other expenses whatsoever, except that cash discounts allowed and taken
100 on sales shall not be included and "sales price" shall not include the amount
101 charged for property returned by customers upon rescission of the contract of
102 sales when the entire amount charged therefor is refunded either in cash or credit
103 or the amount charged for labor or services rendered in installing or applying the
104 property sold, the use, storage or consumption of which is taxable pursuant to
105 sections 144.600 to 144.745. In determining the amount of tax due pursuant to
106 sections 144.600 to 144.745, any charge incident to the extension of credit shall
107 be specifically exempted;

108 (9) "Selling agent", every person acting as a representative of a principal,
109 when such principal is not registered with the director of revenue of the state of
110 Missouri for the collection of the taxes imposed pursuant to sections 144.010 to
111 144.525 or sections 144.600 to 144.745 and who receives compensation by reason
112 of the sale of tangible personal property of the principal, if such property is to be
113 stored, used, or consumed in this state;

114 (10) "Storage", any keeping or retention in this state of tangible personal
115 property purchased from a vendor, except property for sale or property that is
116 temporarily kept or retained in this state for subsequent use outside the state;

117 (11) "Tangible personal property", all items subject to the Missouri sales
118 tax as provided in subdivisions (1) and (3) of section 144.020;

119 (12) "Taxpayer", any person remitting the tax or who should remit the tax
120 levied by sections 144.600 to 144.745;

121 (13) "Use", the exercise of any right or power over tangible personal
122 property incident to the ownership or control of that property, except that it does
123 not include the temporary storage of property in this state for subsequent use
124 outside the state, or the sale of the property in the regular course of business;

125 (14) "Vendor", every person engaged in making sales of tangible personal
126 property by mail order, by advertising, by agent or peddling tangible personal
127 property, soliciting or taking orders for sales of tangible personal property, for
128 storage, use or consumption in this state, all salesmen, solicitors, hawkers,
129 representatives, consignees, peddlers or canvassers, as agents of the dealers,
130 distributors, consignors, supervisors, principals or employers under whom they
131 operate or from whom they obtain the tangible personal property sold by them,

132 and every person who maintains a place of business in this state, maintains a
133 stock of goods in this state, or engages in business activities within this state and
134 every person who engages in this state in the business of acting as a selling agent
135 for persons not otherwise vendors as defined in this subdivision. Irrespective of
136 whether they are making sales on their own behalf or on behalf of the dealers,
137 distributors, consignors, supervisors, principals or employers, they must be
138 regarded as vendors and the dealers, distributors, consignors, supervisors,
139 principals or employers must be regarded as vendors for the purposes of sections
140 144.600 to 144.745. [A person shall not be considered a vendor for the purposes
141 of sections 144.600 to 144.745 if all of the following apply:

- 142 (a) The person's total gross receipts did not exceed five hundred thousand
143 dollars in this state, or twelve and one-half million dollars in the entire United
144 States, in the immediately preceding calendar year;
- 145 (b) The person maintains no place of business in this state; and
- 146 (c) The person has no selling agents in this state.]

✓
Bill

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