

SECOND REGULAR SESSION

[CORRECTED]

SENATE BILL NO. 584

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

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4396S.01I

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 144.010, 144.018, and 144.020, RSMo, and to enact in lieu thereof three new sections relating to sales tax on places of amusement, entertainment, recreation, games, and athletic events.

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

Section A. Sections 144.010, 144.018, and 144.020, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 144.010,
3 144.018, and 144.020, 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 such
13 person "engages in business in this state" or "maintains a place of business in
14 this state" under section 144.605. The isolated or occasional sale of tangible
15 personal property, service, substance, or thing, by a person not engaged in such
16 business, does not constitute engaging in business within the meaning of sections
17 144.010 to 144.525 unless the total amount of the gross receipts from such sales,

18 exclusive of receipts from the sale of tangible personal property by persons which
19 property is sold in the course of the partial or complete liquidation of a
20 household, farm or nonbusiness enterprise, exceeds three thousand dollars in any
21 calendar year. The provisions of this subdivision shall not be construed to make
22 any sale of property which is exempt from sales tax or use tax on June 1, 1977,
23 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, **or** games and athletic
100 events. **Such sales shall only include places of dance, theater, orchestra**
101 **and other performing arts productions, commercial sports, spectator**
102 **sports, gambling, racetracks, arcades, theme and amusement parks,**
103 **water parks, circuses, carnivals, festivals, air shows, museums, marinas,**
104 **motion picture theaters, and other commercial attractions;**

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

107 (c) Sales of local and long distance telecommunications service to
108 telecommunications subscribers and to others through equipment of
109 telecommunications subscribers for the transmission of messages and
110 conversations, and the sale, rental or leasing of all equipment or services
111 pertaining or incidental thereto;

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

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

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

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

124 (13) The noun "tax" means either the tax payable by the purchaser of a
125 commodity or service subject to tax, or the aggregate amount of taxes due from

126 the vendor of such commodities or services during the period for which he or she
127 is required to report his or her collections, as the context may require;

128 (14) "Telecommunications service", for the purpose of this chapter, the
129 transmission of information by wire, radio, optical cable, coaxial cable, electronic
130 impulses, or other similar means. As used in this definition, "information" means
131 knowledge or intelligence represented by any form of writing, signs, signals,
132 pictures, sounds, or any other symbols. Telecommunications service does not
133 include the following if such services are separately stated on the customer's bill
134 or on records of the seller maintained in the ordinary course of business:

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

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

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

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

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

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

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

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

12 The purchase of tangible personal property by a taxpayer shall not be deemed to
13 be for resale if such property is used or consumed by the taxpayer in providing
14 a service on which tax is not imposed by subsection 1 of section 144.020, except
15 purchases made in fulfillment of any obligation under a defense contract with the
16 United States government.

17 2. For purposes of subdivision (2) of subsection 1 of section 144.020, a
18 place of amusement, entertainment or recreation, including games or athletic
19 events, shall remit tax on the amount paid for admissions or seating
20 accommodations, or fees paid to, or in such place of amusement, entertainment
21 or recreation. Any subsequent sale of such admissions or seating accommodations
22 shall not be subject to tax if the initial sale was an arms length transaction for
23 fair market value with an unaffiliated entity. If the sale of such admissions or
24 seating accommodations is exempt or excluded from payment of sales and use
25 taxes, the provisions of this subsection shall not require the place of amusement,
26 entertainment, or recreation to remit tax on that sale. **Such sales under**
27 **subdivision (2) of subsection 1 of section 144.020 shall only include**
28 **places of dance, theater, orchestra and other performing arts**
29 **productions, commercial sports, spectator sports, gambling, racetracks,**
30 **arcades, theme and amusement parks, water parks, circuses, carnivals,**
31 **festivals, air shows, museums, marinas, motion picture theaters, and**
32 **other commercial attractions.**

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

46 served to the public to remit tax on that sale.

47 4. The provisions of this section are intended to reject and abrogate
48 earlier case law interpretations of the state's sales and use tax law with regard
49 to sales for resale as extended in *Music City Centre Management, LLC v. Director*
50 *of Revenue*, 295 S.W.3d 465, (Mo. 2009) and *ICC Management, Inc. v. Director of*
51 *Revenue*, 290 S.W.3d 699, (Mo. 2009). The provisions of this section are intended
52 to clarify the exemption or exclusion of purchases for resale from sales and use
53 taxes as originally enacted in this chapter.

144.020. 1. A tax is hereby levied and imposed for the privilege of titling
2 new and used motor vehicles, trailers, boats, and outboard motors purchased or
3 acquired for use on the highways or waters of this state which are required to be
4 titled under the laws of the state of Missouri and, except as provided in
5 subdivision (9) of this subsection, upon all sellers for the privilege of engaging in
6 the business of selling tangible personal property or rendering taxable service at
7 retail in this state. The rate of tax shall be as follows:

8 (1) Upon every retail sale in this state of tangible personal property,
9 excluding motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats and
10 outboard motors required to be titled under the laws of the state of Missouri and
11 subject to tax under subdivision (9) of this subsection, a tax equivalent to four
12 percent of the purchase price paid or charged, or in case such sale involves the
13 exchange of property, a tax equivalent to four percent of the consideration paid
14 or charged, including the fair market value of the property exchanged at the time
15 and place of the exchange, except as otherwise provided in section 144.025;

16 (2) A tax equivalent to four percent of the amount paid for admission and
17 seating accommodations, or fees paid to, or in any place of amusement,
18 entertainment or recreation, games and athletic events. **Such tax shall only**
19 **include places of dance, theater, orchestra and other performing arts**
20 **productions, commercial sports, spectator sports, gambling, racetracks,**
21 **arcades, theme and amusement parks, water parks, circuses, carnivals,**
22 **festivals, air shows, museums, marinas, motion picture theaters, and**
23 **other commercial attractions;**

24 (3) A tax equivalent to four percent of the basic rate paid or charged on
25 all sales of electricity or electrical current, water and gas, natural or artificial, to
26 domestic, commercial or industrial consumers;

27 (4) A tax equivalent to four percent on the basic rate paid or charged on
28 all sales of local and long distance telecommunications service to

29 telecommunications subscribers and to others through equipment of
30 telecommunications subscribers for the transmission of messages and
31 conversations and upon the sale, rental or leasing of all equipment or services
32 pertaining or incidental thereto; except that, the payment made by
33 telecommunications subscribers or others, pursuant to section 144.060, and any
34 amounts paid for access to the internet or interactive computer services shall not
35 be considered as amounts paid for telecommunications services;

36 (5) A tax equivalent to four percent of the basic rate paid or charged for
37 all sales of services for transmission of messages of telegraph companies;

38 (6) A tax equivalent to four percent on the amount of sales or charges for
39 all rooms, meals and drinks furnished at any hotel, motel, tavern, inn,
40 restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp or
41 other place in which rooms, meals or drinks are regularly served to the public;

42 (7) A tax equivalent to four percent of the amount paid or charged for
43 intrastate tickets by every person operating a railroad, sleeping car, dining car,
44 express car, boat, airplane and such buses and trucks as are licensed by the
45 division of motor carrier and railroad safety of the department of economic
46 development of Missouri, engaged in the transportation of persons for hire;

47 (8) A tax equivalent to four percent of the amount paid or charged for
48 rental or lease of tangible personal property, provided that if the lessor or renter
49 of any tangible personal property had previously purchased the property under
50 the conditions of "sale at retail" or leased or rented the property and the tax was
51 paid at the time of purchase, lease or rental, the lessor, sublessor, renter or
52 subrenter shall not apply or collect the tax on the subsequent lease, sublease,
53 rental or subrental receipts from that property. The purchase, rental or lease of
54 motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats, and outboard
55 motors shall be taxed and the tax paid as provided in this section and section
56 144.070. In no event shall the rental or lease of boats and outboard motors be
57 considered a sale, charge, or fee to, for or in places of amusement, entertainment
58 or recreation nor shall any such rental or lease be subject to any tax imposed to,
59 for, or in such places of amusement, entertainment or recreation. Rental and
60 leased boats or outboard motors shall be taxed under the provisions of the sales
61 tax laws as provided under such laws for motor vehicles and trailers. Tangible
62 personal property which is exempt from the sales or use tax under section
63 144.030 upon a sale thereof is likewise exempt from the sales or use tax upon the
64 lease or rental thereof;

65 (9) A tax equivalent to four percent of the purchase price, as defined in
66 section 144.070, of new and used motor vehicles, trailers, boats, and outboard
67 motors purchased or acquired for use on the highways or waters of this state
68 which are required to be registered under the laws of the state of Missouri. This
69 tax is imposed on the person titling such property, and shall be paid according
70 to the procedures in section 144.440.

71 2. All tickets sold which are sold under the provisions of sections 144.010
72 to 144.525 which are subject to the sales tax shall have printed, stamped or
73 otherwise endorsed thereon, the words "This ticket is subject to a sales tax."

Unofficial

Bill

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