

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 584

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Pre-filed December 3, 2013, and ordered printed.

Read 2nd time January 16, 2014, and referred to the Committee on Ways and Means.

Reported from the Committee March 13, 2014, with recommendation that the bill do pass.

Taken up for Perfection April 1, 2014. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

4396S.01P

AN ACT

To repeal sections 144.010, 144.018, 144.020, and 144.044, RSMo, and to enact in lieu thereof four new sections relating to sales and use taxes.

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

Section A. Sections 144.010, 144.018, 144.020, and 144.044, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 144.010, 144.018, 144.020, and 144.044, 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

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

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. Such sales**
105 **shall not include sales for admission and seating accommodations, or**
106 **fees paid to, or in any place exempt from taxation under subdivision**
107 **(21) of subsection 2 of section 144.030;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

154 3. Sections 144.010 to 144.525 may be known and quoted as the "Sales
155 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. Such sales shall not include sales for
33 admission and seating accommodations, or fees paid to, or in any place
34 exempt from taxation under subdivision (21) of subsection 2 of section
35 144.030.**

36 3. For purposes of subdivision (6) of subsection 1 of section 144.020, a
37 hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist
38 cabin, tourist camp, or other place in which rooms, meals, or drinks are regularly
39 served to the public shall remit tax on the amount of sales or charges for all
40 rooms, meals, and drinks furnished at such hotel, motel, tavern, inn, restaurant,

41 eating house, drugstore, dining car, tourist cabin, tourist camp, or other place in
42 which rooms, meals, or drinks are regularly served to the public. Any subsequent
43 sale of such rooms, meals, or drinks shall not be subject to tax if the initial sale
44 was an arms length transaction for fair market value with an unaffiliated entity.
45 If the sale of such rooms, meals, or drinks is exempt or excluded from payment
46 of sales and use taxes, the provisions of this subsection shall not require the
47 hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist
48 cabin, tourist camp, or other place in which rooms, meals, or drinks are regularly
49 served to the public to remit tax on that sale.

50 4. The provisions of this section are intended to reject and abrogate
51 earlier case law interpretations of the state's sales and use tax law with regard
52 to sales for resale as extended in *Music City Centre Management, LLC v. Director*
53 *of Revenue*, 295 S.W.3d 465, (Mo. 2009) and *ICC Management, Inc. v. Director of*
54 *Revenue*, 290 S.W.3d 699, (Mo. 2009). The provisions of this section are intended
55 to clarify the exemption or exclusion of purchases for resale from sales and use
56 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. Such tax shall not include sales for**
24 **admission and seating accommodations, or fees paid to, or in any place**
25 **exempt from taxation under subdivision (21) of subsection 2 of section**
26 **144.030;**

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

30 (4) A tax equivalent to four percent on the basic rate paid or charged on
31 all sales of local and long distance telecommunications service to
32 telecommunications subscribers and to others through equipment of
33 telecommunications subscribers for the transmission of messages and
34 conversations and upon the sale, rental or leasing of all equipment or services
35 pertaining or incidental thereto; except that, the payment made by
36 telecommunications subscribers or others, pursuant to section 144.060, and any
37 amounts paid for access to the internet or interactive computer services shall not
38 be considered as amounts paid for telecommunications services;

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

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

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

50 (8) A tax equivalent to four percent of the amount paid or charged for
51 rental or lease of tangible personal property, provided that if the lessor or renter
52 of any tangible personal property had previously purchased the property under
53 the conditions of "sale at retail" or leased or rented the property and the tax was
54 paid at the time of purchase, lease or rental, the lessor, sublessor, renter or
55 subrenter shall not apply or collect the tax on the subsequent lease, sublease,
56 rental or subrental receipts from that property. The purchase, rental or lease of

57 motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats, and outboard
58 motors shall be taxed and the tax paid as provided in this section and section
59 144.070. In no event shall the rental or lease of boats and outboard motors be
60 considered a sale, charge, or fee to, for or in places of amusement, entertainment
61 or recreation nor shall any such rental or lease be subject to any tax imposed to,
62 for, or in such places of amusement, entertainment or recreation. Rental and
63 leased boats or outboard motors shall be taxed under the provisions of the sales
64 tax laws as provided under such laws for motor vehicles and trailers. Tangible
65 personal property which is exempt from the sales or use tax under section
66 144.030 upon a sale thereof is likewise exempt from the sales or use tax upon the
67 lease or rental thereof;

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

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

144.044. 1. As used in this section, the following terms mean:

2 (1) "Sale of a modular unit", a transfer of a modular unit as defined in
3 section 700.010;

4 (2) "Sale of a new manufactured home", a transfer of a manufactured
5 home, as defined in section 700.010, which involves the delivery of the document
6 known as the manufacturer's statement of origin to a person other than a
7 manufactured home dealer, as dealer is defined in section 700.010, for purposes
8 of allowing such person to obtain a title to the manufactured home from the
9 department of revenue of this state or the appropriate agency or officer of any
10 other state;

11 **(3) "Sale of a used manufactured home", any subsequent sale of**
12 **a manufactured home as defined in section 700.010, which does not**
13 **qualify as "new" as defined in subdivision (9) of section 700.010.**

14 2. In the event of the sale of a new manufactured home, forty percent of
15 the purchase price, as defined in section 700.320, shall be considered the sale of
16 a service and not the sale of tangible personal property. In addition to the

17 exemptions granted under the provisions of section 144.030, the sale of services
18 as defined in this section shall be specifically exempted from the provisions of
19 sections 238.235 and 238.410, the local sales tax law as defined in section 32.085,
20 sections 144.010 to 144.525 and 144.600 to [144.745] **144.761**, and from the
21 computation of the tax levied, assessed or payable under sections 238.235 and
22 238.410, the local sales tax law as defined in section 32.085, sections 144.010 to
23 144.525 and 144.600 to [144.745] **144.761**, and section 238.235.

24 3. In the event of the sale of a new modular unit, forty percent of the
25 retail sale of the unit or forty percent of the manufacturer's sales price of the unit
26 if the manufacturer makes a sale to a consumer that is not a retail sale, plus any
27 carrier charge and freight charges shall be considered the sale of a service and
28 sixty percent shall be the retail sale of tangible personal property. In addition
29 to the exemptions granted under the provisions of section 144.030, the sale of
30 services as defined in this section shall be specifically exempted from the
31 provisions of sections 238.235 and 238.410, the local sales tax law as defined in
32 section 32.085, sections 144.010 to 144.525 and 144.600 to [144.745] **144.761**, and
33 from the computation of the tax levied, assessed, or payable under sections
34 238.235 and 238.410, the local sales tax law as defined in section 32.085, sections
35 144.010 to 144.525 and 144.600 to [144.745] **144.761**, and section 238.235.

36 **4. In addition to the exemptions granted under the provisions of**
37 **section 144.030, the sale of a used manufactured home as defined in this**
38 **section shall be specifically exempted from the provisions of sections**
39 **238.235 and 238.410, the local sales tax law as defined in section 32.085,**
40 **sections 144.010 to 144.525 and 144.600 to 144.761, and from the**
41 **computation of the tax levied, assessed, or payable under sections**
42 **238.235 and 238.410, the local sales tax law as defined in section 32.085,**
43 **sections 144.010 to 144.525 and 144.600 to 144.761, and section 238.235.**

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