

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 794
98TH GENERAL ASSEMBLY

Reported from the Committee on Ways and Means, January 28, 2016, with recommendation that the Senate Committee Substitute do pass.

5094S.05C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal section 144.030, RSMo, and to enact in lieu thereof one new section relating to a sales tax exemption on parts and accessories for medical equipment.

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

Section A. Section 144.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.030, to read as follows:

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

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

(1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such excise tax is refunded pursuant to section 142.824; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing water to be sold ultimately at retail; or

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

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 usable
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, provided, however, that a municipality or other political subdivision
129 may enter into revenue-sharing agreements with private persons, firms, or
130 corporations providing goods or services, including management services, in or for
131 the place of amusement, entertainment or recreation, games or athletic events,
132 and provided further that nothing in this subdivision shall exempt from tax any
133 amounts retained by any private person, firm, or corporation under such
134 revenue-sharing agreement;

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

158 (20) All sales made by or to religious and charitable organizations and
159 institutions in their religious, charitable or educational functions and activities
160 and all sales made by or to all elementary and secondary schools operated at
161 public expense in their educational functions and activities;

162 (21) All sales of aircraft to common carriers for storage or for use in

163 interstate commerce and all sales made by or to not-for-profit civic, social, service
164 or fraternal organizations, including fraternal organizations which have been
165 declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the
166 1986 Internal Revenue Code, as amended, in their civic or charitable functions
167 and activities and all sales made to eleemosynary and penal institutions and
168 industries of the state, and all sales made to any private not-for-profit institution
169 of higher education not otherwise excluded pursuant to subdivision (20) of this
170 subsection or any institution of higher education supported by public funds, and
171 all sales made to a state relief agency in the exercise of relief functions and
172 activities;

173 (22) All ticket sales made by benevolent, scientific and educational
174 associations which are formed to foster, encourage, and promote progress and
175 improvement in the science of agriculture and in the raising and breeding of
176 animals, and by nonprofit summer theater organizations if such organizations are
177 exempt from federal tax pursuant to the provisions of the Internal Revenue Code
178 and all admission charges and entry fees to the Missouri state fair or any fair
179 conducted by a county agricultural and mechanical society organized and
180 operated pursuant to sections 262.290 to 262.530;

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

199 used in this subdivision, the term "farm machinery and equipment" means new
200 or used farm tractors and such other new or used farm machinery and equipment
201 and repair or replacement parts thereon and any accessories for and upgrades to
202 such farm machinery and equipment, rotary mowers used exclusively for
203 agricultural purposes, and supplies and lubricants used exclusively, solely, and
204 directly for producing crops, raising and feeding livestock, fish, poultry,
205 pheasants, chukar, quail, or for producing milk for ultimate sale at retail,
206 including field drain tile, and one-half of each purchaser's purchase of diesel fuel
207 therefor which is:

208 (a) Used exclusively for agricultural purposes;

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

211 (c) Used directly in producing farm products to be sold ultimately in
212 processed form or otherwise at retail or in producing farm products to be fed to
213 livestock or poultry to be sold ultimately in processed form at retail;

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

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

227 (b) Regulated utility sellers shall determine whether individual purchases
228 are exempt or nonexempt based upon the seller's utility service rate
229 classifications as contained in tariffs on file with and approved by the Missouri
230 public service commission. Sales and purchases made pursuant to the rate
231 classification "residential" and sales to and purchases made by or on behalf of the
232 occupants of residential apartments or condominiums through a single or master
233 meter, including service for common areas and facilities and vacant units, shall
234 be considered as sales made for domestic use and such sales shall be exempt from

235 sales tax. Sellers shall charge sales tax upon the entire amount of purchases
236 classified as nondomestic use. The seller's utility service rate classification and
237 the provision of service thereunder shall be conclusive as to whether or not the
238 utility must charge sales tax;

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

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

259 (26) Excise taxes, collected on sales at retail, imposed by Sections 4041,
260 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United
261 States Code. The director of revenue shall promulgate rules pursuant to chapter
262 536 to eliminate all state and local sales taxes on such excise taxes;

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

269 (28) All sales made to an interstate compact agency created pursuant to
270 sections 70.370 to 70.441 or sections 238.010 to 238.100 in the exercise of the

271 functions and activities of such agency as provided pursuant to the compact;

272 (29) Computers, computer software and computer security systems
273 purchased for use by architectural or engineering firms headquartered in this
274 state. For the purposes of this subdivision, "headquartered in this state" means
275 the office for the administrative management of at least four integrated facilities
276 operated by the taxpayer is located in the state of Missouri;

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

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

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

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

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

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

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

298 (37) All purchases by a contractor on behalf of an entity located in another
299 state, provided that the entity is authorized to issue a certificate of exemption for
300 purchases to a contractor under the provisions of that state's laws. For purposes
301 of this subdivision, the term "certificate of exemption" shall mean any document
302 evidencing that the entity is exempt from sales and use taxes on purchases
303 pursuant to the laws of the state in which the entity is located. Any contractor
304 making purchases on behalf of such entity shall maintain a copy of the entity's
305 exemption certificate as evidence of the exemption. If the exemption certificate
306 issued by the exempt entity to the contractor is later determined by the director

307 of revenue to be invalid for any reason and the contractor has accepted the
308 certificate in good faith, neither the contractor or the exempt entity shall be liable
309 for the payment of any taxes, interest and penalty due as the result of use of the
310 invalid exemption certificate. Materials shall be exempt from all state and local
311 sales and use taxes when purchased by a contractor for the purpose of fabricating
312 tangible personal property which is used in fulfilling a contract for the purpose
313 of constructing, repairing or remodeling facilities for the following:

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

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

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

324 (39) Sales of tickets to any collegiate athletic championship event that is
325 held in a facility owned or operated by a governmental authority or commission,
326 a quasi-governmental agency, a state university or college or by the state or any
327 political subdivision thereof, including a municipality, and that is played on a
328 neutral site and may reasonably be played at a site located outside the state of
329 Missouri. For purposes of this subdivision, "neutral site" means any site that is
330 not located on the campus of a conference member institution participating in the
331 event;

332 (40) All purchases by a sports complex authority created under section
333 64.920, and all sales of utilities by such authority at the authority's cost that are
334 consumed in connection with the operation of a sports complex leased to a
335 professional sports team;

336 (41) All materials, replacement parts, and equipment purchased for use
337 directly upon, and for the modification, replacement, repair, and maintenance of
338 aircraft, aircraft power plants, and aircraft accessories;

339 (42) Sales of sporting clays, wobble, skeet, and trap targets to any
340 shooting range or similar places of business for use in the normal course of
341 business and money received by a shooting range or similar places of business
342 from patrons and held by a shooting range or similar place of business for

343 redistribution to patrons at the conclusion of a shooting event;

344 (43) All sales of motor fuel, as defined in section 142.800, used in any
345 watercraft, as defined in section 306.010;

346 (44) Any new or used aircraft sold or delivered in this state to a person
347 who is not a resident of this state or a corporation that is not incorporated in this
348 state, and such aircraft is not to be based in this state and shall not remain in
349 this state more than ten business days subsequent to the last to occur of:

350 (a) The transfer of title to the aircraft to a person who is not a resident
351 of this state or a corporation that is not incorporated in this state; or

352 (b) The date of the return to service of the aircraft in accordance with 14
353 CFR 91.407 for any maintenance, preventive maintenance, rebuilding, alterations,
354 repairs, or installations that are completed contemporaneously with the transfer
355 of title to the aircraft to a person who is not a resident of this state or a
356 corporation that is not incorporated in this state.

357 3. Any ruling, agreement, or contract, whether written or oral, express or
358 implied, between a person and this state's executive branch, or any other state
359 agency or department, stating, agreeing, or ruling that such person is not
360 required to collect sales and use tax in this state despite the presence of a
361 warehouse, distribution center, or fulfillment center in this state that is owned
362 or operated by the person or an affiliated person shall be null and void unless it
363 is specifically approved by a majority vote of each of the houses of the general
364 assembly. For purposes of this subsection, an "affiliated person" means any
365 person that is a member of the same controlled group of corporations as defined
366 in Section 1563(a) of the Internal Revenue Code of 1986, as amended, as the
367 vendor or any other entity that, notwithstanding its form of organization, bears
368 the same ownership relationship to the vendor as a corporation that is a member
369 of the same controlled group of corporations as defined in Section 1563(a) of the
370 Internal Revenue Code, as amended.

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