

SECOND REGULAR SESSION  
[P E R F E C T E D]  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 823**  
98TH GENERAL ASSEMBLY

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Reported from the Committee on Ways and Means, February 4, 2016, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 823, adopted February 24, 2016.

Taken up for Perfection February 24, 2016. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

4536S.03P

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**AN ACT**

To repeal section 144.030, RSMo, and to enact in lieu thereof one new section relating to sales tax on internet access.

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*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Section A. Section 144.030, RSMo, is repealed and one new section  
2 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  
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 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 the 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 prosthetic or orthopedic devices as defined on  
136 January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the  
137 Social Security Act of 1965, including the items specified in Section 1862(a)(12)  
138 of that act, and also specifically including hearing aids and hearing aid supplies  
139 and all sales of drugs which may be legally dispensed by a licensed pharmacist  
140 only upon a lawful prescription of a practitioner licensed to administer those  
141 items, including samples and materials used to manufacture samples which may  
142 be dispensed by a practitioner authorized to dispense such samples and all sales  
143 or rental of medical oxygen, home respiratory equipment and accessories, hospital  
144 beds and accessories and ambulatory aids, all sales or rental of manual and  
145 powered wheelchairs, stairway lifts, Braille writers, electronic Braille equipment  
146 and, if purchased or rented by or on behalf of a person with one or more physical  
147 or mental disabilities to enable them to function more independently, all sales or  
148 rental of scooters, reading machines, electronic print enlargers and magnifiers,  
149 electronic alternative and augmentative communication devices, and items used  
150 solely to modify motor vehicles to permit the use of such motor vehicles by  
151 individuals with disabilities or sales of over-the-counter or nonprescription drugs  
152 to individuals with disabilities, and drugs required by the Food and Drug  
153 Administration to meet the over-the-counter drug product labeling requirements  
154 in 21 CFR 201.66, or its successor, as prescribed by a health care practitioner  
155 licensed to prescribe;

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

160         (21) All sales of aircraft to common carriers for storage or for use in  
161 interstate commerce and all sales made by or to not-for-profit civic, social, service  
162 or fraternal organizations, including fraternal organizations which have been

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

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

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

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

206 (a) Used exclusively for agricultural purposes;

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

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

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

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

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

235 the provision of service thereunder shall be conclusive as to whether or not the  
236 utility must charge sales tax;

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

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

257 (26) Excise taxes, collected on sales at retail, imposed by Sections 4041,  
258 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United  
259 States Code. The director of revenue shall promulgate rules pursuant to chapter  
260 536 to eliminate all state and local sales taxes on such excise taxes;

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

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

270 (29) Computers, computer software and computer security systems



271 purchased for use by architectural or engineering firms headquartered in this  
272 state. For the purposes of this subdivision, "headquartered in this state" means  
273 the office for the administrative management of at least four integrated facilities  
274 operated by the taxpayer is located in the state of Missouri;

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

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

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

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

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

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

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

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

307 for the payment of any taxes, interest and penalty due as the result of use of the  
308 invalid exemption certificate. Materials shall be exempt from all state and local  
309 sales and use taxes when purchased by a contractor for the purpose of fabricating  
310 tangible personal property which is used in fulfilling a contract for the purpose  
311 of constructing, repairing or remodeling facilities for the following:

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

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

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

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

330 (40) All purchases by a sports complex authority created under section  
331 64.920, and all sales of utilities by such authority at the authority's cost that are  
332 consumed in connection with the operation of a sports complex leased to a  
333 professional sports team;

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

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

342 (43) All sales of motor fuel, as defined in section 142.800, used in any

343 watercraft, as defined in section 306.010;

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

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

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

355 **(45) All internet access or the use of internet access regardless**  
356 **of whether the tax is imposed on a provider of internet access or a**  
357 **buyer of internet access. For purposes of this subdivision, the**  
358 **following terms shall mean:**

359 (a) "Direct costs", costs incurred by a governmental authority  
360 solely because of an internet service provider's use of the public  
361 right-of-way. The term shall not include costs that the governmental  
362 authority would have incurred if the internet service provider did not  
363 make such use of the public right-of-way. Direct costs shall be  
364 determined in a manner consistent with generally accepted accounting  
365 principles;

366 (b) "Internet", computer and telecommunications facilities,  
367 including equipment and operating software, that comprises the  
368 interconnected worldwide network that employ the Transmission  
369 Control Protocol or Internet Protocol, or any predecessor or successor  
370 protocols to that protocol, to communicate information of all kinds by  
371 wire or radio;

372 (c) "Internet access", a service that enables users to connect to  
373 the internet to access content, information, or other services without  
374 regard to whether the service is referred to as telecommunications,  
375 communications, transmission, or similar services, and without regard  
376 to whether a provider of the service is subject to regulation by the  
377 Federal Communications Commission as a common carrier under 47  
378 U.S.C. Section 201, et seq. For purposes of this subdivision, "internet  
379 access" also includes: the purchase, use, or sale of communications

380 services, including telecommunications services as defined in section  
381 144.010, to the extent the communications services are purchased, used,  
382 or sold to provide the service described in this subdivision or to  
383 otherwise enable users to access content, information, or other services  
384 offered over the internet; services that are incidental to the provision  
385 of a service described in this subdivision, when furnished to users as  
386 part of such service, including a home page, electronic mail, and  
387 instant messaging, including voice-capable and video-capable electronic  
388 mail and instant messaging, video clips, and personal electronic storage  
389 capacity; a home page electronic mail and instant messaging, including  
390 voice-capable and video-capable electronic mail and instant messaging,  
391 video clips, and personal electronic storage capacity that are provided  
392 independently or that are not packed with internet access. As used in  
393 this subdivision, "internet access" does not include voice, audio, and  
394 video programming or other products and services, except services  
395 described in this paragraph or this subdivision, that use internet  
396 protocol or any successor protocol and for which there is a charge,  
397 regardless of whether the charge is separately stated or aggregated  
398 with the charge for services described in this paragraph or this  
399 subdivision;

400 (d) "Tax", any charge imposed by the state or a political  
401 subdivision of the state for the purpose of generating revenues for  
402 governmental purposes and that is not a fee imposed for a specific  
403 privilege, service, or benefit conferred, except as described as  
404 otherwise under this subdivision, or any obligation imposed on a seller  
405 to collect and to remit to the state or a political subdivision of the state  
406 any gross retail tax, sales tax, or use tax imposed on a buyer by such a  
407 governmental entity. The term "tax" shall not include any franchise fee  
408 or similar fee imposed or authorized under sections 67.1830 or 67.2689;  
409 sections 622 or 653 of the Communications Act of 1934, 47 U.S.C. Section  
410 542 and 47 U.S.C. Section 573; or any other fee related to obligations of  
411 telecommunications carriers under the Communications Act of 1934, 47  
412 U.S.C. Section 151 et seq., except to the extent that:

413 a. The fee is not imposed for the purpose of recovering direct  
414 costs incurred by the franchising or other governmental authority from  
415 providing the specific privilege, service, or benefit conferred to the  
416 payer of the fee; or

417           **b. The fee is imposed for the use of a public right-of-way based**  
418 **on a percentage of the service revenue, and the fee exceeds the**  
419 **incremental direct costs incurred by the governmental authority**  
420 **associated with the provision of that right-of-way to the provider of**  
421 **internet access service.**

422 **Nothing in this subdivision shall be interpreted as an exemption from**  
423 **taxes due on goods or services that were subject to tax on January 1,**  
424 **2016.**

425           3. Any ruling, agreement, or contract, whether written or oral, express or  
426 implied, between a person and this state's executive branch, or any other state  
427 agency or department, stating, agreeing, or ruling that such person is not  
428 required to collect sales and use tax in this state despite the presence of a  
429 warehouse, distribution center, or fulfillment center in this state that is owned  
430 or operated by the person or an affiliated person shall be null and void unless it  
431 is specifically approved by a majority vote of each of the houses of the general  
432 assembly. For purposes of this subsection, an "affiliated person" means any  
433 person that is a member of the same controlled group of corporations as defined  
434 in Section 1563(a) of the Internal Revenue Code of 1986, as amended, as the  
435 vendor or any other entity that, notwithstanding its form of organization, bears  
436 the same ownership relationship to the vendor as a corporation that is a member  
437 of the same controlled group of corporations as defined in Section 1563(a) of the  
438 Internal Revenue Code, as amended.

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