

SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 16

AN ACT

To repeal sections 144.010 and 144.605, RSMo, and to enact in lieu thereof two new sections relating to sales and use taxes for delivery charges.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1           Section A. Sections 144.010 and 144.605, RSMo, are repealed  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

4           144.010. 1. The following words, terms, and phrases when  
5 used in sections 144.010 to 144.525 have the meanings ascribed to  
6 them in this section, except when the context indicates a  
7 different meaning:

8           (1) "Admission" includes seats and tables, reserved or  
9 otherwise, and other similar accommodations and charges made  
10 therefor and amount paid for admission, exclusive of any  
11 admission tax imposed by the federal government or by sections  
12 144.010 to 144.525;

13           (2) "Business" includes any activity engaged in by any  
14 person, or caused to be engaged in by him, with the object of  
15 gain, benefit or advantage, either direct or indirect, and the  
16 classification of which business is of such character as to be

1 subject to the terms of sections 144.010 to 144.525. A person is  
2 "engaging in business" in this state for purposes of sections  
3 144.010 to 144.525 if such person engages in business in this  
4 state or maintains a place of business in this state under  
5 section 144.605. The isolated or occasional sale of tangible  
6 personal property, service, substance, or thing, by a person not  
7 engaged in such business, does not constitute engaging in  
8 business within the meaning of sections 144.010 to 144.525 unless  
9 the total amount of the gross receipts from such sales, exclusive  
10 of receipts from the sale of tangible personal property by  
11 persons which property is sold in the course of the partial or  
12 complete liquidation of a household, farm or nonbusiness  
13 enterprise, exceeds three thousand dollars in any calendar year.  
14 The provisions of this subdivision shall not be construed to make  
15 any sale of property which is exempt from sales tax or use tax on  
16 June 1, 1977, subject to that tax thereafter;

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

24 (4) "Gross receipts", except as provided in section  
25 144.012, means the total amount of the sale price of the sales at  
26 retail including any services other than charges incident to the  
27 extension of credit that are a part of such sales made by the  
28 businesses herein referred to, capable of being valued in money,

1 whether received in money or otherwise; except that, the term  
2 gross receipts shall not include the sale price of property  
3 returned by customers when the full sale price thereof is  
4 refunded either in cash or by credit. In determining any tax due  
5 under sections 144.010 to 144.525 on the gross receipts, charges  
6 incident to the extension of credit shall be specifically  
7 exempted. For the purposes of sections 144.010 to 144.525 the  
8 total amount of the sale price above mentioned shall be deemed to  
9 be the amount received. It shall also include the lease or  
10 rental consideration where the right to continuous possession or  
11 use of any article of tangible personal property is granted under  
12 a lease or contract and such transfer of possession would be  
13 taxable if outright sale were made and, in such cases, the same  
14 shall be taxable as if outright sale were made and considered as  
15 a sale of such article, and the tax shall be computed and paid by  
16 the lessee upon the rentals paid. The term "gross receipts"  
17 shall not include usual and customary delivery charges that are  
18 stated separately from the sale price;

19 (5) "Instructional class", includes any class, lesson, or  
20 instruction intended or used for teaching;

21 (6) "Livestock", cattle, calves, sheep, swine, ratite  
22 birds, including but not limited to, ostrich and emu, aquatic  
23 products as defined in section 277.024, llamas, alpaca, buffalo,  
24 elk documented as obtained from a legal source and not from the  
25 wild, goats, horses, other equine, or rabbits raised in  
26 confinement for human consumption;

27 (7) "Motor vehicle leasing company" shall be a company  
28 obtaining a permit from the director of revenue to operate as a

1 motor vehicle leasing company. Not all persons renting or  
2 leasing trailers or motor vehicles need to obtain such a permit;  
3 however, no person failing to obtain such a permit may avail  
4 itself of the optional tax provisions of subsection 5 of section  
5 144.070, as hereinafter provided;

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

14 (9) "Product which is intended to be sold ultimately for  
15 final use or consumption" means tangible personal property, or  
16 any service that is subject to state or local sales or use taxes,  
17 or any tax that is substantially equivalent thereto, in this  
18 state or any other state;

19 (10) "Purchaser" means a person who purchases tangible  
20 personal property or to whom are rendered services, receipts from  
21 which are taxable under sections 144.010 to 144.525;

22 (11) "Research or experimentation activities" are the  
23 development of an experimental or pilot model, plant process,  
24 formula, invention or similar property, and the improvement of  
25 existing property of such type. Research or experimentation  
26 activities do not include activities such as ordinary testing or  
27 inspection of materials or products for quality control,  
28 efficiency surveys, advertising promotions or research in

1 connection with literary, historical or similar projects;

2 (12) "Sale" or "sales" includes installment and credit  
3 sales, and the exchange of properties as well as the sale thereof  
4 for money, every closed transaction constituting a sale, and  
5 means any transfer, exchange or barter, conditional or otherwise,  
6 in any manner or by any means whatsoever, of tangible personal  
7 property for valuable consideration and the rendering, furnishing  
8 or selling for a valuable consideration any of the substances,  
9 things and services herein designated and defined as taxable  
10 under the terms of sections 144.010 to 144.525;

11 (13) "Sale at retail" means any transfer made by any person  
12 engaged in business as defined herein of the ownership of, or  
13 title to, tangible personal property to the purchaser, for use or  
14 consumption and not for resale in any form as tangible personal  
15 property, for a valuable consideration; except that, for the  
16 purposes of sections 144.010 to 144.525 and the tax imposed  
17 thereby: (i) purchases of tangible personal property made by  
18 duly licensed physicians, dentists, optometrists and  
19 veterinarians and used in the practice of their professions shall  
20 be deemed to be purchases for use or consumption and not for  
21 resale; and (ii) the selling of computer printouts, computer  
22 output or microfilm or microfiche and computer-assisted photo  
23 compositions to a purchaser to enable the purchaser to obtain for  
24 his or her own use the desired information contained in such  
25 computer printouts, computer output on microfilm or microfiche  
26 and computer-assisted photo compositions shall be considered as  
27 the sale of a service and not as the sale of tangible personal  
28 property. Where necessary to conform to the context of sections

1 144.010 to 144.525 and the tax imposed thereby, the term sale at  
2 retail shall be construed to embrace:

3 (a) Sales of admission tickets, cash admissions, charges  
4 and fees to or in places of amusement, entertainment and  
5 recreation, games and athletic events, except amounts paid for  
6 any instructional class;

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

10 (c) Sales of local and long distance telecommunications  
11 service to telecommunications subscribers and to others through  
12 equipment of telecommunications subscribers for the transmission  
13 of messages and conversations, and the sale, rental or leasing of  
14 all equipment or services pertaining or incidental thereto;

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

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

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

27 (14) "Seller" means a person selling or furnishing tangible  
28 personal property or rendering services, on the receipts from

1 which a tax is imposed pursuant to section 144.020;

2 (15) The noun "tax" means either the tax payable by the  
3 purchaser of a commodity or service subject to tax, or the  
4 aggregate amount of taxes due from the vendor of such commodities  
5 or services during the period for which he or she is required to  
6 report his or her collections, as the context may require; and

7 (16) "Telecommunications service", for the purpose of this  
8 chapter, the transmission of information by wire, radio, optical  
9 cable, coaxial cable, electronic impulses, or other similar  
10 means. As used in this definition, "information" means knowledge  
11 or intelligence represented by any form of writing, signs,  
12 signals, pictures, sounds, or any other symbols.

13 Telecommunications service does not include the following if such  
14 services are separately stated on the customer's bill or on  
15 records of the seller maintained in the ordinary course of  
16 business:

17 (a) Access to the internet, access to interactive computer  
18 services or electronic publishing services, except the amount  
19 paid for the telecommunications service used to provide such  
20 access;

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

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

26 (d) Cable or satellite television or music services.

27 2. For purposes of the taxes imposed under sections 144.010  
28 to 144.525, and any other provisions of law pertaining to sales

1 or use taxes which incorporate the provisions of sections 144.010  
2 to 144.525 by reference, the term manufactured homes shall have  
3 the same meaning given it in section 700.010.

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

6  
7 144.605. The following words and phrases as used in  
8 sections 144.600 to 144.745 mean and include:

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

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

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

18 (b) Soliciting sales or taking orders by sales agents or  
19 traveling representatives;

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

24 a. Sells a similar line of products as the vendor and does  
25 so under the same or a similar business name;

26 b. Maintains an office, distribution facility, warehouse,  
27 or storage place, or similar place of business in the state to  
28 facilitate the delivery of property or services sold by the



1 vendor to the vendor's customers;

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

4 d. Facilitates the vendor's delivery of property to  
5 customers in the state by allowing the vendor's customers to pick  
6 up property sold by the vendor at an office, distribution  
7 facility, warehouse, storage place, or similar place of business  
8 maintained by the person in the state; or

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

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

16 (e) Notwithstanding paragraph (c), a vendor shall be  
17 presumed to engage in business activities within this state if  
18 the vendor enters into an agreement with one or more residents of  
19 this state under which the resident, for a commission or other  
20 consideration, directly or indirectly refers potential customers,  
21 whether by a link on an internet website, an in-person oral  
22 presentation, telemarketing, or otherwise, to the vendor, if the  
23 cumulative gross receipts from sales by the vendor to customers  
24 in the state who are referred to the vendor by all residents with  
25 this type of an agreement with the vendor is in excess of ten  
26 thousand dollars during the preceding twelve months;

27 (f) The presumption in paragraph (e) may be rebutted by  
28 submitting proof that the residents with whom the vendor has an

1 agreement did not engage in any activity within the state that  
2 was significantly associated with the vendor's ability to  
3 establish or maintain the vendor's market in the state during the  
4 preceding twelve months. Such proof may consist of sworn written  
5 statements from all of the residents with whom the vendor has an  
6 agreement stating that they did not engage in any solicitation in  
7 the state on behalf of the vendor during the preceding year  
8 provided that such statements were provided and obtained in good  
9 faith;

10 (3) "Maintains a place of business in this state" includes  
11 maintaining, occupying, or using, permanently or temporarily,  
12 directly or indirectly, by whatever name called, an office, place  
13 of distribution, sales or sample room or place, warehouse or  
14 storage place, or other place of business in this state, whether  
15 owned or operated by the vendor or by any other person other than  
16 a common carrier acting in its capacity as such;

17 (4) "Person", any individual, firm, copartnership, joint  
18 venture, association, corporation, municipal or private, and  
19 whether organized for profit or not, state, county, political  
20 subdivision, state department, commission, board, bureau or  
21 agency, except the state transportation department, estate,  
22 trust, business trust, receiver or trustee appointed by the state  
23 or federal court, syndicate, or any other group or combination  
24 acting as a unit, and the plural as well as the singular number;

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

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

4           (7) "Sale", any transfer, barter or exchange of the title  
5 or ownership of tangible personal property, or the right to use,  
6 store or consume the same, for a consideration paid or to be  
7 paid, and any transaction whether called leases, rentals,  
8 bailments, loans, conditional sales or otherwise, and  
9 notwithstanding that the title or possession of the property or  
10 both is retained for security. For the purpose of this law the  
11 place of delivery of the property to the purchaser, user, storer  
12 or consumer is deemed to be the place of sale, whether the  
13 delivery be by the vendor or by common carriers, private  
14 contractors, mails, express, agents, salesmen, solicitors,  
15 hawkers, representatives, consignors, peddlers, canvassers or  
16 otherwise;

17           (8) "Sales price", the consideration including the charges  
18 for services, except charges incident to the extension of credit,  
19 paid or given, or contracted to be paid or given, by the  
20 purchaser to the vendor for the tangible personal property,  
21 including any services that are a part of the sale, valued in  
22 money, whether paid in money or otherwise, and any amount for  
23 which credit is given to the purchaser by the vendor, without any  
24 deduction therefrom on account of the cost of the property sold,  
25 the cost of materials used, labor or service cost, losses or any  
26 other expenses whatsoever, except that cash discounts allowed and  
27 taken on sales shall not be included and "sales price" shall not  
28 include the amount charged for property returned by customers

1 upon rescission of the contract of sales when the entire amount  
2 charged therefor is refunded either in cash or credit or the  
3 amount charged for labor or services rendered in installing or  
4 applying the property sold, the use, storage or consumption of  
5 which is taxable pursuant to sections 144.600 to 144.745. The  
6 sales price shall not include usual and customary delivery  
7 charges that are separately stated. In determining the amount of  
8 tax due pursuant to sections 144.600 to 144.745, any charge  
9 incident to the extension of credit shall be specifically  
10 exempted;

11 (9) "Selling agent", every person acting as a  
12 representative of a principal, when such principal is not  
13 registered with the director of revenue of the state of Missouri  
14 for the collection of the taxes imposed pursuant to sections  
15 144.010 to 144.525 or sections 144.600 to 144.745 and who  
16 receives compensation by reason of the sale of tangible personal  
17 property of the principal, if such property is to be stored,  
18 used, or consumed in this state;

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

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

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

28 (13) "Use", the exercise of any right or power over

1 tangible personal property incident to the ownership or control  
2 of that property, except that it does not include the temporary  
3 storage of property in this state for subsequent use outside the  
4 state, or the sale of the property in the regular course of  
5 business;

6 (14) "Vendor", every person engaged in making sales of  
7 tangible personal property by mail order, by advertising, by  
8 agent or peddling tangible personal property, soliciting or  
9 taking orders for sales of tangible personal property, for  
10 storage, use or consumption in this state, all salesmen,  
11 solicitors, hawkers, representatives, consignees, peddlers or  
12 canvassers, as agents of the dealers, distributors, consignors,  
13 supervisors, principals or employers under whom they operate or  
14 from whom they obtain the tangible personal property sold by  
15 them, and every person who maintains a place of business in this  
16 state, maintains a stock of goods in this state, or engages in  
17 business activities within this state and every person who  
18 engages in this state in the business of acting as a selling  
19 agent for persons not otherwise vendors as defined in this  
20 subdivision. Irrespective of whether they are making sales on  
21 their own behalf or on behalf of the dealers, distributors,  
22 consignors, supervisors, principals or employers, they must be  
23 regarded as vendors and the dealers, distributors, consignors,  
24 supervisors, principals or employers must be regarded as vendors  
25 for the purposes of sections 144.600 to 144.745.