

FIRST REGULAR SESSION

SENATE BILL NO. 16

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KRAUS.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0031S.01I

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.

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

Section A. Sections 144.010 and 144.605, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 144.010 and 144.605, to
3 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 this
14 state under section 144.605. The isolated or occasional sale of tangible personal
15 property, service, substance, or thing, by a person not engaged in such business,
16 does not constitute engaging in business within the meaning of sections 144.010
17 to 144.525 unless the total amount of the gross receipts from such sales, exclusive
18 of receipts from the sale of tangible personal property by persons which property
19 is sold in the course of the partial or complete liquidation of a household, farm

20 or nonbusiness enterprise, exceeds three thousand dollars in any calendar
21 year. The provisions of this subdivision shall not be construed to make any sale
22 of property which is exempt from sales tax or use tax on June 1, 1977, subject to
23 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. **The term "gross receipts" shall not include reasonable**
46 **delivery charges that are stated separately from the sale price unless**
47 **the parties intended to include delivery costs in the sale price;**

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

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

55 (7) "Motor vehicle leasing company" shall be a company obtaining a

56 permit from the director of revenue to operate as a motor vehicle leasing
57 company. Not all persons renting or leasing trailers or motor vehicles need to
58 obtain such a permit; however, no person failing to obtain such a permit may
59 avail itself of the optional tax provisions of subsection 5 of section 144.070, as
60 hereinafter provided;

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

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

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

75 (11) "Research or experimentation activities" are the development of an
76 experimental or pilot model, plant process, formula, invention or similar property,
77 and the improvement of existing property of such type. Research or
78 experimentation activities do not include activities such as ordinary testing or
79 inspection of materials or products for quality control, efficiency surveys,
80 advertising promotions or research in connection with literary, historical or
81 similar projects;

82 (12) "Sale" or "sales" includes installment and credit sales, and the
83 exchange of properties as well as the sale thereof for money, every closed
84 transaction constituting a sale, and means any transfer, exchange or barter,
85 conditional or otherwise, in any manner or by any means whatsoever, of tangible
86 personal property for valuable consideration and the rendering, furnishing or
87 selling for a valuable consideration any of the substances, things and services
88 herein designated and defined as taxable under the terms of sections 144.010 to
89 144.525;

90 (13) "Sale at retail" means any transfer made by any person engaged in
91 business as defined herein of the ownership of, or title to, tangible personal

92 property to the purchaser, for use or consumption and not for resale in any form
93 as tangible personal property, for a valuable consideration; except that, for the
94 purposes of sections 144.010 to 144.525 and the tax imposed thereby: (i)
95 purchases of tangible personal property made by duly licensed physicians,
96 dentists, optometrists and veterinarians and used in the practice of their
97 professions shall be deemed to be purchases for use or consumption and not for
98 resale; and (ii) the selling of computer printouts, computer output or microfilm
99 or microfiche and computer-assisted photo compositions to a purchaser to enable
100 the purchaser to obtain for his or her own use the desired information contained
101 in such computer printouts, computer output on microfilm or microfiche and
102 computer-assisted photo compositions shall be considered as the sale of a service
103 and not as the sale of tangible personal property. Where necessary to conform to
104 the context of sections 144.010 to 144.525 and the tax imposed thereby, the term
105 sale at retail shall be construed to embrace:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 144.605. The following words and phrases as used in sections 144.600 to
2 144.745 mean and include:

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

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

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

10 (b) Soliciting sales or taking orders by sales agents or traveling
11 representatives;

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

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

17 b. Maintains an office, distribution facility, warehouse, or storage place,
18 or similar place of business in the state to facilitate the delivery of property or
19 services sold by the vendor to the vendor's customers;

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

22 d. Facilitates the vendor's delivery of property to customers in the state
23 by allowing the vendor's customers to pick up property sold by the vendor at an
24 office, distribution facility, warehouse, storage place, or similar place of business
25 maintained by the person in the state; or

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

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

33 (e) Notwithstanding paragraph (c), a vendor shall be presumed to engage
34 in business activities within this state if the vendor enters into an agreement
35 with one or more residents of this state under which the resident, for a
36 commission or other consideration, directly or indirectly refers potential
37 customers, whether by a link on an internet website, an in-person oral
38 presentation, telemarketing, or otherwise, to the vendor, if the cumulative gross
39 receipts from sales by the vendor to customers in the state who are referred to the
40 vendor by all residents with this type of an agreement with the vendor is in
41 excess of ten thousand dollars during the preceding twelve months;

42 (f) The presumption in paragraph (e) may be rebutted by submitting proof
43 that the residents with whom the vendor has an agreement did not engage in any
44 activity within the state that was significantly associated with the vendor's
45 ability to establish or maintain the vendor's market in the state during the
46 preceding twelve months. Such proof may consist of sworn written statements
47 from all of the residents with whom the vendor has an agreement stating that

48 they did not engage in any solicitation in the state on behalf of the vendor during
49 the preceding year provided that such statements were provided and obtained in
50 good faith;

51 (3) "Maintains a place of business in this state" includes maintaining,
52 occupying, or using, permanently or temporarily, directly or indirectly, by
53 whatever name called, an office, place of distribution, sales or sample room or
54 place, warehouse or storage place, or other place of business in this state,
55 whether owned or operated by the vendor or by any other person other than a
56 common carrier acting in its capacity as such;

57 (4) "Person", any individual, firm, copartnership, joint venture,
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 (5) "Purchase", the acquisition of the ownership of, or title to, tangible
65 personal property, through a sale, as defined herein, for the purpose of storage,
66 use or consumption in this state;

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

70 (7) "Sale", any transfer, barter or exchange of the title or ownership of
71 tangible personal property, or the right to use, store or consume the same, for a
72 consideration paid or to be paid, and any transaction whether called leases,
73 rentals, bailments, loans, conditional sales or otherwise, and notwithstanding
74 that the title or possession of the property or both is retained for security. For
75 the purpose of this law the place of delivery of the property to the purchaser,
76 user, storer or consumer is deemed to be the place of sale, whether the delivery
77 be by the vendor or by common carriers, private contractors, mails, express,
78 agents, salesmen, solicitors, hawkers, representatives, consignors, peddlers,
79 canvassers or otherwise;

80 (8) "Sales price", the consideration including the charges for services,
81 except charges incident to the extension of credit, paid or given, or contracted to
82 be paid or given, by the purchaser to the vendor for the tangible personal
83 property, including any services that are a part of the sale, valued in money,

84 whether paid in money or otherwise, and any amount for which credit is given to
85 the purchaser by the vendor, without any deduction therefrom on account of the
86 cost of the property sold, the cost of materials used, labor or service cost, losses
87 or any other expenses whatsoever, except that cash discounts allowed and taken
88 on sales shall not be included and "sales price" shall not include the amount
89 charged for property returned by customers upon rescission of the contract of
90 sales when the entire amount charged therefor is refunded either in cash or credit
91 or the amount charged for labor or services rendered in installing or applying the
92 property sold, the use, storage or consumption of which is taxable pursuant to
93 sections 144.600 to 144.745. **The sales price shall not include reasonable**
94 **delivery charges that are separately stated unless the parties intended**
95 **to include delivery costs in the sales price.** In determining the amount of
96 tax due pursuant to sections 144.600 to 144.745, any charge incident to the
97 extension of credit shall be specifically exempted;

98 (9) "Selling agent", every person acting as a representative of a principal,
99 when such principal is not registered with the director of revenue of the state of
100 Missouri for the collection of the taxes imposed pursuant to sections 144.010 to
101 144.525 or sections 144.600 to 144.745 and who receives compensation by reason
102 of the sale of tangible personal property of the principal, if such property is to be
103 stored, used, or consumed in this state;

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

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

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

111 (13) "Use", the exercise of any right or power over tangible personal
112 property incident to the ownership or control of that property, except that it does
113 not include the temporary storage of property in this state for subsequent use
114 outside the state, or the sale of the property in the regular course of business;

115 (14) "Vendor", every person engaged in making sales of tangible personal
116 property by mail order, by advertising, by agent or peddling tangible personal
117 property, soliciting or taking orders for sales of tangible personal property, for
118 storage, use or consumption in this state, all salesmen, solicitors, hawkers,
119 representatives, consignees, peddlers or canvassers, as agents of the dealers,

120 distributors, consignors, supervisors, principals or employers under whom they
121 operate or from whom they obtain the tangible personal property sold by them,
122 and every person who maintains a place of business in this state, maintains a
123 stock of goods in this state, or engages in business activities within this state and
124 every person who engages in this state in the business of acting as a selling agent
125 for persons not otherwise vendors as defined in this subdivision. Irrespective of
126 whether they are making sales on their own behalf or on behalf of the dealers,
127 distributors, consignors, supervisors, principals or employers, they must be
128 regarded as vendors and the dealers, distributors, consignors, supervisors,
129 principals or employers must be regarded as vendors for the purposes of sections
130 144.600 to 144.745.

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