

FIRST REGULAR SESSION

SENATE BILL NO. 247

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KRAUS.

Read 1st time January 4, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0899S.02I

AN ACT

To repeal sections 144.026, 144.030, and 144.054, RSMo, and to enact in lieu thereof three new sections relating to sales and use tax exemptions.

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

Section A. Sections 144.026, 144.030, and 144.054, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 144.026,
3 144.030, and 144.054, to read as follows:

144.026. **1.** The director of revenue shall not send notice to any taxpayer
2 under subsection 2 of section 144.021 regarding the decision in IBM Corporation
3 v. Director of Revenue, [Case No. 94999] **491 S.W.3d 535** (Mo. banc 2016) prior
4 to August 28, 2017.

5 **2. The general assembly intends expressly through this statute**
6 **to clarify existing law as interpreted by the Missouri supreme court in**
7 **Southwestern Bell Tel. Co. v. Director of Revenue, 78 S.W.3d 763 (Mo.**
8 **banc 2002) and Southwestern Bell Tel. Co. v. Director of Revenue 182**
9 **S.W.3d 226 (Mo. banc 2005) holding that telecommunications services,**
10 **including the electronic transfer of a voice or voices, constitutes the**
11 **manufacturing of a product for the purposes of the exemptions in**
12 **subdivisions (5) and (6) of subsection 2 of section 144.030 and**
13 **subsection 2 of section 144.054. The director of revenue and all courts**
14 **of competent jurisdiction shall follow the reasoning of the Missouri**
15 **supreme court in these decisions and their progeny in interpreting and**
16 **applying the exemptions in subdivisions (5) and (6) of subsection 2 of**
17 **section 144.030 and subsection 2 of section 144.054, and shall apply such**
18 **reasoning to all pending audits, assessments, refund claims, and claims**

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

19 for credit not finally adjudicated as of the effective date of this section,
20 as well as all future audits, assessments, refund claims, and claims for
21 credit.

22 **3. The general assembly further intends expressly to abrogate**
23 **through this statute the Missouri supreme court's interpretation of the**
24 **exemptions found in subdivisions (5) and (6) of subsection 2 of section**
25 **144.030 and subsection 2 of section 144.054 in IBM Corporation v.**
26 **Director of Revenue 491 S.W.3d 535 (Mo. banc 2016), and in any other**
27 **decision of the Missouri supreme court or administrative hearing**
28 **commission and any letter ruling or regulation of the director of**
29 **revenue that is inconsistent with this section.**

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 shall
51 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. **For the purposes of this subdivision and subdivision (6)**
68 **of this subsection, the term "product" shall include telecommunications**
69 **services and the term "manufacturing" shall include the electronic**
70 **transfer of voices.** Material recovery is not the reuse of materials within a
71 manufacturing process or the use of a product previously recovered. The material
72 recovery processing plant shall qualify under the provisions of this section
73 regardless of ownership of the material being recovered;

74 (6) Machinery and equipment, and parts and the materials and supplies
75 solely required for the installation or construction of such machinery and
76 equipment, purchased and used to establish new or to expand existing
77 manufacturing, mining or fabricating plants in the state if such machinery and
78 equipment is used directly in manufacturing, mining or fabricating a product
79 which is intended to be sold ultimately for final use or consumption;

80 (7) Tangible personal property which is used exclusively in the
81 manufacturing, processing, modification or assembling of products sold to the
82 United States government or to any agency of the United States government;

83 (8) Animals or poultry used for breeding or feeding purposes, or captive
84 wildlife;

85 (9) Newsprint, ink, computers, photosensitive paper and film, toner,
86 printing plates and other machinery, equipment, replacement parts and supplies
87 used in producing newspapers published for dissemination of news to the general
88 public;

89 (10) The rentals of films, records or any type of sound or picture
90 transcriptions for public commercial display;

91 (11) Pumping machinery and equipment used to propel products delivered
92 by pipelines engaged as common carriers;

93 (12) Railroad rolling stock for use in transporting persons or property in
94 interstate commerce and motor vehicles licensed for a gross weight of twenty-four
95 thousand pounds or more or trailers used by common carriers, as defined in
96 section 390.020, in the transportation of persons or property;

97 (13) Electrical energy used in the actual primary manufacture, processing,

98 compounding, mining or producing of a product, or electrical energy used in the
99 actual secondary processing or fabricating of the product, or a material recovery
100 processing plant as defined in subdivision (5) of this subsection, in facilities
101 owned or leased by the taxpayer, if the total cost of electrical energy so used
102 exceeds ten percent of the total cost of production, either primary or secondary,
103 exclusive of the cost of electrical energy so used or if the raw materials used in
104 such processing contain at least twenty-five percent recovered materials as
105 defined in section 260.200. There shall be a rebuttable presumption that the raw
106 materials used in the primary manufacture of automobiles contain at least
107 twenty-five percent recovered materials. For purposes of this subdivision,
108 "processing" means any mode of treatment, act or series of acts performed upon
109 materials to transform and reduce them to a different state or thing, including
110 treatment necessary to maintain or preserve such processing by the producer at
111 the production facility;

112 (14) Anodes which are used or consumed in manufacturing, processing,
113 compounding, mining, producing or fabricating and which have a useful life of
114 less than one year;

115 (15) Machinery, equipment, appliances and devices purchased or leased
116 and used solely for the purpose of preventing, abating or monitoring air pollution,
117 and materials and supplies solely required for the installation, construction or
118 reconstruction of such machinery, equipment, appliances and devices;

119 (16) Machinery, equipment, appliances and devices purchased or leased
120 and used solely for the purpose of preventing, abating or monitoring water
121 pollution, and materials and supplies solely required for the installation,
122 construction or reconstruction of such machinery, equipment, appliances and
123 devices;

124 (17) Tangible personal property purchased by a rural water district;

125 (18) All amounts paid or charged for admission or participation or other
126 fees paid by or other charges to individuals in or for any place of amusement,
127 entertainment or recreation, games or athletic events, including museums, fairs,
128 zoos and planetariums, owned or operated by a municipality or other political
129 subdivision where all the proceeds derived therefrom benefit the municipality or
130 other political subdivision and do not inure to any private person, firm, or
131 corporation, provided, however, that a municipality or other political subdivision
132 may enter into revenue-sharing agreements with private persons, firms, or
133 corporations providing goods or services, including management services, in or for

134 the place of amusement, entertainment or recreation, games or athletic events,
135 and provided further that nothing in this subdivision shall exempt from tax any
136 amounts retained by any private person, firm, or corporation under such
137 revenue-sharing agreement;

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

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

165 (21) All sales of aircraft to common carriers for storage or for use in
166 interstate commerce and all sales made by or to not-for-profit civic, social, service
167 or fraternal organizations, including fraternal organizations which have been
168 declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the
169 1986 Internal Revenue Code, as amended, in their civic or charitable functions

170 and activities and all sales made to eleemosynary and penal institutions and
171 industries of the state, and all sales made to any private not-for-profit institution
172 of higher education not otherwise excluded pursuant to subdivision (20) of this
173 subsection or any institution of higher education supported by public funds, and
174 all sales made to a state relief agency in the exercise of relief functions and
175 activities;

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

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

206 agricultural purposes, and supplies and lubricants used exclusively, solely, and
207 directly for producing crops, raising and feeding livestock, fish, poultry,
208 pheasants, chukar, quail, or for producing milk for ultimate sale at retail,
209 including field drain tile, and one-half of each purchaser's purchase of diesel fuel
210 therefor which is:

211 (a) Used exclusively for agricultural purposes;

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

214 (c) Used directly in producing farm products to be sold ultimately in
215 processed form or otherwise at retail or in producing farm products to be fed to
216 livestock or poultry to be sold ultimately in processed form at retail;

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

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

230 (b) Regulated utility sellers shall determine whether individual purchases
231 are exempt or nonexempt based upon the seller's utility service rate
232 classifications as contained in tariffs on file with and approved by the Missouri
233 public service commission. Sales and purchases made pursuant to the rate
234 classification "residential" and sales to and purchases made by or on behalf of the
235 occupants of residential apartments or condominiums through a single or master
236 meter, including service for common areas and facilities and vacant units, shall
237 be considered as sales made for domestic use and such sales shall be exempt from
238 sales tax. Sellers shall charge sales tax upon the entire amount of purchases
239 classified as nondomestic use. The seller's utility service rate classification and
240 the provision of service thereunder shall be conclusive as to whether or not the
241 utility must charge sales tax;

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

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

262 (26) Excise taxes, collected on sales at retail, imposed by Sections 4041,
263 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United
264 States Code. The director of revenue shall promulgate rules pursuant to chapter
265 536 to eliminate all state and local sales taxes on such excise taxes;

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

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

275 (29) Computers, computer software and computer security systems
276 purchased for use by architectural or engineering firms headquartered in this
277 state. For the purposes of this subdivision, "headquartered in this state" means

278 the office for the administrative management of at least four integrated facilities
279 operated by the taxpayer is located in the state of Missouri;

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

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

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

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

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

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

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

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

314 sales and use taxes when purchased by a contractor for the purpose of fabricating
315 tangible personal property which is used in fulfilling a contract for the purpose
316 of constructing, repairing or remodeling facilities for the following:

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

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

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

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

335 (40) All purchases by a sports complex authority created under section
336 64.920, and all sales of utilities by such authority at the authority's cost that are
337 consumed in connection with the operation of a sports complex leased to a
338 professional sports team;

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

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

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

349 (44) Any new or used aircraft sold or delivered in this state to a person

350 who is not a resident of this state or a corporation that is not incorporated in this
351 state, and such aircraft is not to be based in this state and shall not remain in
352 this state more than ten business days subsequent to the last to occur of:

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

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

360 (45) All internet access or the use of internet access regardless of whether
361 the tax is imposed on a provider of internet access or a buyer of internet
362 access. For purposes of this subdivision, the following terms shall mean:

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

369 (b) "Internet", computer and telecommunications facilities, including
370 equipment and operating software, that comprises the interconnected worldwide
371 network that employ the transmission control protocol or internet protocol, or any
372 predecessor or successor protocols to that protocol, to communicate information
373 of all kinds by wire or radio;

374 (c) "Internet access", a service that enables users to connect to the
375 internet to access content, information, or other services without regard to
376 whether the service is referred to as telecommunications, communications,
377 transmission, or similar services, and without regard to whether a provider of the
378 service is subject to regulation by the Federal Communications Commission as a
379 common carrier under 47 U.S.C. Section 201, et seq. For purposes of this
380 subdivision, internet access also includes: the purchase, use, or sale of
381 communications services, including telecommunications services as defined in
382 section 144.010, to the extent the communications services are purchased, used,
383 or sold to provide the service described in this subdivision or to otherwise enable
384 users to access content, information, or other services offered over the internet;
385 services that are incidental to the provision of a service described in this

386 subdivision, when furnished to users as part of such service, including a home
387 page, electronic mail, and instant messaging, including voice-capable and
388 video-capable electronic mail and instant messaging, video clips, and personal
389 electronic storage capacity; a home page electronic mail and instant messaging,
390 including 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 this
393 subdivision, internet access does not include voice, audio, and video programming
394 or other products and services, except services described in this paragraph or this
395 subdivision, that use internet protocol or any successor protocol and for which
396 there is a charge, regardless of whether the charge is separately stated or
397 aggregated with the charge for services described in this paragraph or this
398 subdivision;

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

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

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

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

420 3. Any ruling, agreement, or contract, whether written or oral, express or
421 implied, between a person and this state's executive branch, or any other state

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

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

2 (1) "Processing", any mode of treatment, act, or series of acts performed
3 upon materials to transform or reduce them to a different state or thing,
4 including treatment necessary to maintain or preserve such processing by the
5 producer at the production facility;

6 (2) "Recovered materials", those materials which have been diverted or
7 removed from the solid waste stream for sale, use, reuse, or recycling, whether
8 or not they require subsequent separation and processing.

9 2. In addition to all other exemptions granted under this chapter, there
10 is hereby specifically exempted from the provisions of sections 144.010 to 144.525
11 and 144.600 to 144.761, and from the computation of the tax levied, assessed, or
12 payable under sections 144.010 to 144.525 and 144.600 to 144.761, electrical
13 energy and gas, whether natural, artificial, or propane, water, coal, and energy
14 sources, chemicals, machinery, equipment, and materials used or consumed in the
15 manufacturing, processing, compounding, mining, or producing of any product, or
16 used or consumed in the processing of recovered materials, or used in research
17 and development related to manufacturing, processing, compounding, mining, or
18 producing any product. The exemptions granted in this subsection shall not
19 apply to local sales taxes as defined in section 32.085 and the provisions of this
20 subsection shall be in addition to any state and local sales tax exemption
21 provided in section 144.030. **For the purposes of this section, the term**
22 **"product" shall include telecommunications services and the term**
23 **"manufacturing" shall include the electronic transfer of voices.**

24 3. In addition to all other exemptions granted under this chapter, there

25 is hereby specifically exempted from the provisions of sections 144.010 to 144.525
26 and 144.600 to 144.761, and section 238.235, and the local sales tax law as
27 defined in section 32.085, and from the computation of the tax levied, assessed,
28 or payable under sections 144.010 to 144.525 and 144.600 to 144.761, and section
29 238.235, and the local sales tax law as defined in section 32.085, all utilities,
30 machinery, and equipment used or consumed directly in television or radio
31 broadcasting and all sales and purchases of tangible personal property, utilities,
32 services, or any other transaction that would otherwise be subject to the state or
33 local sales or use tax when such sales are made to or purchases are made by a
34 contractor for use in fulfillment of any obligation under a defense contract with
35 the United States government, and all sales and leases of tangible personal
36 property by any county, city, incorporated town, or village, provided such sale or
37 lease is authorized under chapter 100, and such transaction is certified for sales
38 tax exemption by the department of economic development, and tangible personal
39 property used for railroad infrastructure brought into this state for processing,
40 fabrication, or other modification for use outside the state in the regular course
41 of business.

42 4. In addition to all other exemptions granted under this chapter, there
43 is hereby specifically exempted from the provisions of sections 144.010 to 144.525
44 and 144.600 to 144.761, and section 238.235, and the local sales tax law as
45 defined in section 32.085, and from the computation of the tax levied, assessed,
46 or payable under sections 144.010 to 144.525 and 144.600 to 144.761, and section
47 238.235, and the local sales tax law as defined in section 32.085, all sales and
48 purchases of tangible personal property, utilities, services, or any other
49 transaction that would otherwise be subject to the state or local sales or use tax
50 when such sales are made to or purchases are made by a private partner for use
51 in completing a project under sections 227.600 to 227.669.

52 5. In addition to all other exemptions granted under this chapter, there
53 is hereby specifically exempted from the provisions of sections 144.010 to 144.525
54 and 144.600 to 144.761, and section 238.235, and the local sales tax law as
55 defined in section 32.085, and from the computation of the tax levied, assessed,
56 or payable under sections 144.010 to 144.525 and 144.600 to 144.761, and section
57 238.235, and the local sales tax law as defined in section 32.085, all materials,
58 manufactured goods, machinery and parts, electrical energy and gas, whether
59 natural, artificial or propane, water, coal and other energy sources, chemicals,
60 soaps, detergents, cleaning and sanitizing agents, and other ingredients and

61 materials inserted by commercial or industrial laundries to treat, clean, and
62 sanitize textiles in facilities which process at least five hundred pounds of textiles
63 per hour and at least sixty thousand pounds per week.

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