

SECOND REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1534

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR NICOLA.

6578S.03P

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 144.010, 144.014, and 144.020, RSMo, and to enact in lieu thereof three new sections relating to the exclusion of certain transactions from sales tax.

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

Section A. Sections 144.010, 144.014, and 144.020, RSMo,
2 are repealed and three new sections enacted in lieu thereof, to
3 be known as sections 144.010, 144.014, and 144.020, to read as
4 follows:

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

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

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

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

14 character as to be subject to the terms of sections 144.010
15 to 144.525. A person is "engaging in business" in this state
16 for purposes of sections 144.010 to 144.525 if such person
17 engages in business activities within this state or
18 maintains a place of business in this state under section
19 144.605. The isolated or occasional sale of tangible
20 personal property, service, substance, or thing, by a person
21 not engaged in such business, does not constitute engaging
22 in business within the meaning of sections 144.010 to
23 144.525 unless the total amount of the gross receipts from
24 such sales, exclusive of receipts from the sale of tangible
25 personal property by persons which property is sold in the
26 course of the partial or complete liquidation of a
27 household, farm or nonbusiness enterprise, exceeds three
28 thousand dollars in any calendar year. The provisions of
29 this subdivision shall not be construed to make any sale of
30 property which is exempt from sales tax or use tax on June
31 1, 1977, subject to that tax thereafter;

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

39 (4) "Gross receipts", except as provided in section
40 144.012, means the total amount of the sale price of the
41 sales at retail including any services other than charges
42 incident to the extension of credit that are a part of such
43 sales made by the businesses herein referred to, capable of
44 being valued in money, whether received in money or
45 otherwise; except that, the term gross receipts shall not

46 include the sale price of property returned by customers
47 when the full sale price thereof is refunded either in cash
48 or by credit. In determining any tax due under sections
49 144.010 to 144.525 on the gross receipts, charges incident
50 to the extension of credit, **including credit card and debit**
51 **card processing fees not to exceed three percent of the**
52 **purchase price or the merchant discount fee, whichever is**
53 **less**, shall be specifically exempted. For the purposes of
54 sections 144.010 to 144.525 the total amount of the sale
55 price above mentioned shall be deemed to be the amount
56 received. It shall also include the lease or rental
57 consideration where the right to continuous possession or
58 use of any article of tangible personal property is granted
59 under a lease or contract and such transfer of possession
60 would be taxable if outright sale were made and, in such
61 cases, the same shall be taxable as if outright sale were
62 made and considered as a sale of such article, and the tax
63 shall be computed and paid by the lessee upon the rentals
64 paid. The term gross receipts shall not include usual and
65 customary delivery charges that are stated separately from
66 the sale price;

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

69 (6) "Livestock", cattle, calves, sheep, swine, ratite
70 birds, including but not limited to, ostrich and emu,
71 aquatic products as described in section 277.024, llamas,
72 alpaca, buffalo, bison, elk documented as obtained from a
73 legal source and not from the wild, goats, horses, other
74 equine, honey bees, or rabbits raised in confinement for
75 human consumption;

76 (7) "Motor vehicle leasing company" [shall be], a
77 company obtaining a permit from the director of revenue to

78 operate as a motor vehicle leasing company. Not all persons
79 renting or leasing trailers or motor vehicles need to obtain
80 such a permit; however, no person failing to obtain such a
81 permit may avail itself of the optional tax provisions of
82 subsection 5 of section 144.070, as hereinafter provided;

83 (8) "Person" includes any individual, firm,
84 copartnership, joint adventure, association, corporation,
85 municipal or private, and whether organized for profit or
86 not, state, county, political subdivision, state department,
87 commission, board, bureau or agency, except the state
88 transportation department, estate, trust, business trust,
89 receiver or trustee appointed by the state or federal court,
90 syndicate, or any other group or combination acting as a
91 unit, and the plural as well as the singular number;

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

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

100 (11) "Research or experimentation activities" are the
101 development of an experimental or pilot model, plant
102 process, formula, invention or similar property, and the
103 improvement of existing property of such type. Research or
104 experimentation activities do not include activities such as
105 ordinary testing or inspection of materials or products for
106 quality control, efficiency surveys, advertising promotions
107 or research in connection with literary, historical or
108 similar projects;

109 (12) "Sale" or "sales" includes installment and credit
110 sales, and the exchange of properties as well as the sale
111 thereof for money, every closed transaction constituting a
112 sale, and means any transfer, exchange or barter,
113 conditional or otherwise, in any manner or by any means
114 whatsoever, of tangible personal property for valuable
115 consideration and the rendering, furnishing or selling for a
116 valuable consideration any of the substances, things and
117 services herein designated and defined as taxable under the
118 terms of sections 144.010 to 144.525;

119 (13) "Sale at retail" means any transfer made by any
120 person engaged in business as defined herein of the
121 ownership of, or title to, tangible personal property to the
122 purchaser, for use or consumption and not for resale in any
123 form as tangible personal property, for a valuable
124 consideration; except that, for the purposes of sections
125 144.010 to 144.525 and the tax imposed thereby: (i)
126 purchases of tangible personal property made by duly
127 licensed physicians, dentists, optometrists and
128 veterinarians and used in the practice of their professions
129 shall be deemed to be purchases for use or consumption and
130 not for resale; and (ii) the selling of computer printouts,
131 computer output or microfilm or microfiche and computer-
132 assisted photo compositions to a purchaser to enable the
133 purchaser to obtain for his or her own use the desired
134 information contained in such computer printouts, computer
135 output on microfilm or microfiche and computer-assisted
136 photo compositions shall be considered as the sale of a
137 service and not as the sale of tangible personal property.
138 Where necessary to conform to the context of sections
139 144.010 to 144.525 and the tax imposed thereby, the term
140 sale at retail shall be construed to embrace:

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

145 (b) Sales of electricity, electrical current, water
146 and gas, natural or artificial, to domestic, commercial or
147 industrial consumers, except as provided in subdivision (12)
148 of subsection 1 of section 144.011;

149 (c) Sales of local and long distance
150 telecommunications service to telecommunications subscribers
151 and to others through equipment of telecommunications
152 subscribers for the transmission of messages and
153 conversations, and the sale, rental or leasing of all
154 equipment or services pertaining or incidental thereto;

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

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

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

168 (14) "Seller" means a person selling or furnishing
169 tangible personal property or rendering services, on the
170 receipts from which a tax is imposed pursuant to section
171 144.020;

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

178 (16) "Telecommunications service", for the purpose of
179 this chapter, the transmission of information by wire,
180 radio, optical cable, coaxial cable, electronic impulses, or
181 other similar means. As used in this definition,
182 "information" means knowledge or intelligence represented by
183 any form of writing, signs, signals, pictures, sounds, or
184 any other symbols. Telecommunications service does not
185 include the following if such services are separately stated
186 on the customer's bill or on records of the seller
187 maintained in the ordinary course of business:

188 (a) Access to the internet, access to interactive
189 computer services or electronic publishing services, except
190 the amount paid for the telecommunications service used to
191 provide such access;

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

193 (c) Private mobile radio services which are not two-
194 way commercial mobile radio services such as wireless
195 telephone, personal communications services or enhanced
196 specialized mobile radio services as defined pursuant to
197 federal law; or

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

199 2. For purposes of the taxes imposed under sections
200 144.010 to 144.525, and any other provisions of law
201 pertaining to sales or use taxes which incorporate the
202 provisions of sections 144.010 to 144.525 by reference, the

203 term manufactured homes shall have the same meaning given it
204 in section 700.010.

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

207 4. Any business that charges a credit or debit card
208 processing fee that is excluded from gross receipts shall
209 provide notice to a purchaser of such charges. Such notice
210 shall be posted at a physical point of sale or on the
211 business's webpage on which a sales transaction is completed
212 in a font size no smaller than twelve-point, or the
213 equivalent for digital displays, and shall include the
214 following language:

215 "NOTICE: PURSUANT TO MISSOURI LAW, PAYMENTS MADE
216 BY A CREDIT AND/OR DEBIT CARD ARE SUBJECT TO A
217 PROCESSING FEE NOT TO EXCEED THREE PERCENT OF
218 THE ACTUAL PURCHASE PRICE."

144.014. 1. Notwithstanding other provisions of law
2 to the contrary, [beginning October 1, 1997, the tax levied
3 and imposed under this chapter on] all retail sales of food
4 shall be [at the rate of one percent. The revenue derived
5 from the one percent rate pursuant to this section shall be
6 deposited by the state treasurer in the school district
7 trust fund and shall be distributed as provided in section
8 144.701] exempted from the provisions of and from the
9 computation of the tax levied, assessed, or payable pursuant
10 to this chapter. The provisions of this subsection are
11 intended to exempt the sale of food from the state sales tax
12 imposed pursuant to this chapter, and the department of
13 revenue shall not construe the provisions of this subsection
14 as an exemption from the local sales tax law, as defined in
15 section 32.085. As required in sections 43(a) and 47(a) of
16 article IV of the Missouri constitution, the sales tax

17 **imposed pursuant to such sections shall be imposed upon the**
18 **sales and services that are taxable pursuant to this**
19 **chapter, which shall not include the retail sale of food as**
20 **exempted in this section.**

21 2. For the purposes of this section, the term "food"
22 shall include only those products and types of food for
23 which food stamps may be redeemed pursuant to the provisions
24 of the Federal Food Stamp Program as contained in 7 U.S.C.
25 Section 2012, as that section now reads or as it may be
26 amended hereafter, and shall include food dispensed by or
27 through vending machines. For the purpose of this section,
28 except for vending machine sales, the term "food" shall not
29 include food or drink sold by any establishment where the
30 gross receipts derived from the sale of food prepared by
31 such establishment for immediate consumption on or off the
32 premises of the establishment constitutes more than eighty
33 percent of the total gross receipts of that establishment,
34 regardless of whether such prepared food is consumed on the
35 premises of that establishment, including, but not limited
36 to, sales of food by any restaurant, fast food restaurant,
37 delicatessen, eating house, or café.

144.020. 1. A tax is hereby levied and imposed for
2 the privilege of titling new and used motor vehicles,
3 trailers, boats, and outboard motors purchased or acquired
4 for use on the highways or waters of this state which are
5 required to be titled under the laws of the state of
6 Missouri and, except as provided in subdivision (9) of this
7 subsection, upon all sellers for the privilege of engaging
8 in the business of selling tangible personal property or
9 rendering taxable service at retail in this state. The rate
10 of tax shall be as follows:

11 (1) Upon every retail sale in this state of tangible
12 personal property, excluding motor vehicles, trailers,
13 motorcycles, mopeds, motortricycles, boats and outboard
14 motors required to be titled under the laws of the state of
15 Missouri and subject to tax under subdivision (9) of this
16 subsection, a tax equivalent to four percent of the purchase
17 price paid or charged, or in case such sale involves the
18 exchange of property, a tax equivalent to four percent of
19 the consideration paid or charged, including the fair market
20 value of the property exchanged at the time and place of the
21 exchange, except as otherwise provided in section 144.025;

22 (2) A tax equivalent to four percent of the amount
23 paid for admission and seating accommodations, or fees paid
24 to, or in any place of amusement, entertainment or
25 recreation, games and athletic events, except amounts paid
26 for any instructional class;

27 (3) A tax equivalent to four percent of the basic rate
28 paid or charged on all sales of electricity or electrical
29 current, water and gas, natural or artificial, to domestic,
30 commercial or industrial consumers;

31 (4) (a) A tax equivalent to four percent on the basic
32 rate paid or charged on all sales of local and long distance
33 telecommunications service to telecommunications subscribers
34 and to others through equipment of telecommunications
35 subscribers for the transmission of messages and
36 conversations and upon the sale, rental or leasing of all
37 equipment or services pertaining or incidental thereto;
38 except that, the payment made by telecommunications
39 subscribers or others, pursuant to section 144.060, and any
40 amounts paid for access to the internet or interactive
41 computer services shall not be considered as amounts paid
42 for telecommunications services;

43 (b) If local and long distance telecommunications
44 services subject to tax under this subdivision are
45 aggregated with and not separately stated from charges for
46 telecommunications service or other services not subject to
47 tax under this subdivision, including, but not limited to,
48 interstate or international telecommunications services,
49 then the charges for nontaxable services may be subject to
50 taxation unless the telecommunications provider can identify
51 by reasonable and verifiable standards such portion of the
52 charges not subject to such tax from its books and records
53 that are kept in the regular course of business, including,
54 but not limited to, financial statement, general ledgers,
55 invoice and billing systems and reports, and reports for
56 regulatory tariffs and other regulatory matters;

57 (c) A telecommunications provider shall notify the
58 director of revenue of its intention to utilize the
59 standards described in paragraph (b) of this subdivision to
60 determine the charges that are subject to sales tax under
61 this subdivision. Such notification shall be in writing and
62 shall meet standardized criteria established by the
63 department regarding the form and format of such notice;

64 (d) The director of revenue may promulgate and enforce
65 reasonable rules and regulations for the administration and
66 enforcement of the provisions of this subdivision. Any rule
67 or portion of a rule, as that term is defined in section
68 536.010, that is created under the authority delegated in
69 this section shall become effective only if it complies with
70 and is subject to all of the provisions of chapter 536 and,
71 if applicable, section 536.028. This section and chapter
72 536 are nonseverable and if any of the powers vested with
73 the general assembly pursuant to chapter 536 to review, to
74 delay the effective date, or to disapprove and annul a rule

75 are subsequently held unconstitutional, then the grant of
76 rulemaking authority and any rule proposed or adopted after
77 August 28, 2019, shall be invalid and void;

78 (5) A tax equivalent to four percent of the basic rate
79 paid or charged for all sales of services for transmission
80 of messages of telegraph companies;

81 (6) A tax equivalent to four percent on the amount of
82 sales or charges for all rooms, meals and drinks furnished
83 at any hotel, motel, tavern, inn, restaurant, eating house,
84 drugstore, dining car, tourist cabin, tourist camp or other
85 place in which rooms, meals or drinks are regularly served
86 to the public. The tax imposed under this subdivision shall
87 not apply to any automatic mandatory gratuity for a large
88 group imposed by a restaurant when such gratuity is reported
89 as employee tip income and the restaurant withholds income
90 tax under section 143.191 on such gratuity;

91 (7) A tax equivalent to four percent of the amount
92 paid or charged for intrastate tickets by every person
93 operating a railroad, sleeping car, dining car, express car,
94 boat, airplane and such buses and trucks as are licensed by
95 the division of motor carrier and railroad safety of the
96 department of economic development of Missouri, engaged in
97 the transportation of persons for hire;

98 (8) A tax equivalent to four percent of the amount
99 paid or charged for rental or lease of tangible personal
100 property, provided that if the lessor or renter of any
101 tangible personal property had previously purchased the
102 property under the conditions of sale at retail or leased or
103 rented the property and the tax was paid at the time of
104 purchase, lease or rental, the lessor, sublessor, renter or
105 subrenter shall not apply or collect the tax on the
106 subsequent lease, sublease, rental or subrental receipts

107 from that property. The purchase, rental or lease of motor
108 vehicles, trailers, motorcycles, mopeds, motortricycles,
109 boats, and outboard motors shall be taxed and the tax paid
110 as provided in this section and section 144.070. In no
111 event shall the rental or lease of boats and outboard motors
112 be considered a sale, charge, or fee to, for or in places of
113 amusement, entertainment or recreation nor shall any such
114 rental or lease be subject to any tax imposed to, for, or in
115 such places of amusement, entertainment or recreation.
116 Rental and leased boats or outboard motors shall be taxed
117 under the provisions of the sales tax laws as provided under
118 such laws for motor vehicles and trailers. Tangible
119 personal property which is exempt from the sales or use tax
120 under section 144.030 upon a sale thereof is likewise exempt
121 from the sales or use tax upon the lease or rental thereof;

122 (9) A tax equivalent to four percent of the purchase
123 price, as defined in section 144.070, of new and used motor
124 vehicles, trailers, boats, and outboard motors purchased or
125 acquired for use on the highways or waters of this state
126 which are required to be registered under the laws of the
127 state of Missouri. This tax is imposed on the person
128 titling such property, and shall be paid according to the
129 procedures in section 144.070 or 144.440.

130 2. All tickets sold which are sold under the
131 provisions of this chapter which are subject to the sales
132 tax shall have printed, stamped or otherwise endorsed
133 thereon, the words "This ticket is subject to a sales tax."

134 **3. Notwithstanding any provision of law to the**
135 **contrary, of the four percent rate imposed pursuant to this**
136 **section, the revenue derived from a rate of two tenths of**
137 **one percent shall be deposited by the state treasurer in the**
138 **school district trust fund and shall be distributed as**

139 provided in section 144.701. The remaining portion of the
140 revenue derived from the rate imposed pursuant to this
141 section shall be deposited in the general revenue fund.

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