

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 489
89TH GENERAL ASSEMBLY

Reported from the Committee on Ways & Means, April 22, 1998, with recommendation that the House Committee Substitute for Senate Committee Substitute for Senate Bill No. 489 Do Pass.
ANNE C. WALKER, Chief Clerk
L2190.05C

AN ACT

To repeal sections 144.025 and 144.034, RSMo 1994, and section 144.030, RSMo Supp. 1997, relating to taxation, and to enact in lieu thereof four new sections relating to the same subject.

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

Section A. Sections 144.025 and 144.034, RSMo 1994, and section 144.030, RSMo Supp. 1997, are repealed and four new sections enacted in lieu thereof, to be known as sections 144.025, 144.030, 144.034 and 1, to read as follows:

144.025. 1. Notwithstanding any other provisions of law to the contrary, in any retail sale other than retail sales governed by subsection [3] **4** of this section, where any article **on which sales or use tax due, if any, was paid, credited, satisfied or waived** is taken in trade as a credit or part payment on the purchase price of the article being sold, the tax imposed by sections 144.020 and 144.440 shall be computed only on that portion of the purchase price which exceeds the actual allowance made for the article traded in or exchanged, if there is a bill of sale or other record showing the actual allowance made for the article traded in or exchanged. **For the purpose of determining sales or use tax liability, a purchaser of a motor vehicle, trailer, boat or outboard motor shall not be allowed to deduct from the purchase price of the motor vehicle, trailer, boat or outboard motor the actual allowance of any article other than a motor vehicle, trailer, boat or outboard motor traded or exchanged as a credit or partial payment for such item. The department of revenue shall assume all sales and use tax due, if any, have been properly paid, credited, satisfied or waived, including the sales or use tax due, if any, on motor vehicles, trailers, boats or outboard motors which have a valid certificate of ownership from any state, unless the department has good reason to believe otherwise.** Where the purchaser of a motor vehicle, trailer, boat or outboard motor receives a rebate from the seller or manufacturer, the tax imposed by sections 144.020 and 144.440 shall be computed only on that portion of the purchase price which exceeds the amount of the rebate, if there is a bill of sale or other record showing the actual rebate given by the seller or manufacturer. Where the trade-in or exchange allowance plus any applicable rebate exceeds the purchase price of the purchased article there shall be no sales or use tax owed. This section shall also apply to motor vehicles, trailers, boats, and outboard motors sold by

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

the owner **or holder of a properly assigned certificate of ownership** if the seller purchases or contracts to purchase a [replacement] **subsequent** motor vehicle, trailer, boat, or outboard motor within ninety days before or after the date of the sale of the original article and a notarized bill of sale showing the paid sale price is presented to the department of revenue at the time of licensing. A copy of the bill of sale shall be left with the licensing office. Where the [new replacement] **subsequent** motor vehicle, trailer, boat, or outboard motor is titled more than ninety days after the sale of the original motor vehicle, trailer, boat, or outboard motor, the allowance pursuant to this section shall be made if the person titling such article establishes that the purchase or contract to purchase was finalized prior to the expiration of the ninety-day period.

2. As used in this section, the term "boat" includes all motorboats and vessels, as the terms "motorboat" and "vessel" are defined in section 306.010, RSMo.

3. As used in this section, the term "motor vehicle" includes motor vehicles as defined in section 301.010, RSMo, recreational vehicles as defined in section 700.010, RSMo, or a combination of a truck as defined in section 301.010, RSMo, and a trailer as defined in section 301.010, RSMo.

[3.] 4. The provisions of subsection 1 of this section shall not apply to retail sales of manufactured homes in which the purchaser receives a document known as the "Manufacturer's Statement of Origin" for purposes of obtaining a title to the manufactured home from the department of revenue of this state or from the appropriate agency or officer of any other state.

144.030. 1. There is hereby specifically exempted from the provisions of sections 144.010 to 144.525 and from the computation of the tax levied, assessed or payable pursuant to sections 144.010 to 144.525 such retail sales as may be made in commerce between this state and any other state of the United States, or between this state and any foreign country, and any retail sale which the state of Missouri is prohibited from taxing pursuant to the Constitution or laws of the United States of America, and such retail sales of tangible personal property which the general assembly of the state of Missouri is prohibited from taxing or further taxing by the constitution of this state.

2. There are also specifically exempted from the provisions of the local sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525 and 144.600 to 144.745 and from the computation of the tax levied, assessed or payable pursuant to the local sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525 and 144.600 to 144.745:

(1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such excise tax is refunded pursuant to section 142.584, RSMo; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing water to be sold ultimately at retail; or feed for livestock or poultry which is to be used in the feeding of livestock or poultry to be sold ultimately in processed form or otherwise at retail; or grain to be converted into foodstuffs which are to be sold ultimately in processed form at retail; or seed, limestone or fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested will be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at retail; economic poisons registered pursuant to the provisions of the Missouri pesticide registration law (sections 281.220 to 281.310, RSMo) which are to be used in connection with the growth or production of crops, fruit trees or orchards applied before, during, or after planting, the crop of which when harvested will be sold at retail or will be converted into foodstuffs which are to be sold ultimately in processed form at retail;

(2) Materials, manufactured goods, machinery and parts which when used in manufacturing,

processing, compounding, mining, producing or fabricating become a component part or ingredient of the new personal property resulting from such manufacturing, processing, compounding, mining, producing or fabricating and which new personal property is intended to be sold ultimately for final use or consumption; and materials, including without limitation, gases and manufactured goods, including without limitation, slagging materials and firebrick, which are ultimately consumed in the manufacturing process by blending, reacting or interacting with or by becoming, in whole or in part, component parts or ingredients of steel products intended to be sold ultimately for final use or consumption;

(3) Materials, replacement parts and equipment purchased for use directly upon, and for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property;

(4) **Replacement** machinery [and], equipment, **and parts** and the materials and supplies solely required for the installation or construction of such **replacement** machinery [and], equipment, [replacing and used for the same purposes or to produce a substantially similar product as the machinery and equipment, which is purchased for] and **parts**, used directly [for manufacturing or fabricating] **in manufacturing, mining, fabricating or producing** a product which is intended to be sold ultimately for final use or consumption; and machinery and equipment, and the materials and supplies required solely for the operation, installation or construction of such machinery and equipment, purchased and used to establish new, or to replace or expand existing, material recovery processing plants in this state. For the purposes of this subdivision, a "material recovery processing plant" means a facility which converts recovered materials into a new product, or a different form which is used in producing a new product, and shall include a facility or equipment which is used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but shall not include motor vehicles used on highways. For purposes of this section, the terms "motor vehicle" and "highway" shall have the same meaning pursuant to section 301.010, RSMo;

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

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

(7) Animals or poultry used for breeding or feeding purposes;

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

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

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

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

(12) Electrical energy used in the actual primary manufacture, processing, compounding, mining or producing of a product, or electrical energy used in the actual secondary processing or fabricating of the product, **or a material recovery processing plant as defined in subdivision (4) of this subsection**, in facilities owned or leased by the taxpayer, if the total cost of electrical energy so used exceeds ten percent of the total cost of production, either primary or secondary, exclusive of the cost of electrical energy so used **or if the raw materials used in such processing contain at least twenty-five percent recovered materials as defined in section 260.200, RSMo**. For purposes of this subdivision, "processing" means any mode of treatment, act or series of acts performed upon materials to transform and reduce them to a different state or thing, including treatment necessary to maintain or preserve such processing by the producer at the production facility;

(13) Anodes **or electrodes** which are used or consumed in manufacturing, processing, compounding, mining, producing or fabricating and which have a useful life of less than one year;

(14) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring air pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices, and so certified as such by the director of the department of natural resources, except that any action by the director pursuant to this subdivision may be appealed to the air conservation commission which may uphold or reverse such action;

(15) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring water pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices, and so certified as such by the director of the department of natural resources, except that any action by the director pursuant to this subdivision may be appealed to the Missouri clean water commission which may uphold or reverse such action;

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

(17) All amounts paid or charged for admission or participation or other fees paid by or other charges to individuals in or for any place of amusement, entertainment or recreation, games or athletic events, including museums, fairs, zoos and planetariums, owned or operated by a municipality or other political subdivision where all the proceeds derived therefrom benefit the municipality or other political subdivision and do not inure to any private person, firm, or corporation;

(18) All sales of insulin and prosthetic or orthopedic devices as defined on January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including the items specified in section 1862(a)(12) of that act, and also specifically including hearing aids and hearing aid supplies and all sales of drugs which may be legally dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to administer those items, including samples and materials used to manufacture samples which may be dispensed by a practitioner authorized to dispense such samples and all sales of medical oxygen;

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

(20) All sales of aircraft to common carriers for storage or for use in interstate commerce and all sales made by or to not for profit civic, social, service or fraternal organizations, including fraternal organizations which have been declared tax exempt organizations pursuant to section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, solely in their civic or charitable functions and activities and all sales made to eleemosynary and penal institutions and industries of the state, and all

sales made to any private not for profit institution of higher education not otherwise excluded pursuant to subdivision (19) of this subsection or any institution of higher education supported by public funds, and all sales made to a state relief agency in the exercise of relief functions and activities;

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

(22) All sales made to any private not for profit elementary or secondary school, all sales of feed additives, medications or vaccines administered to livestock or poultry in the production of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber, all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying agricultural crops, and all sales of farm machinery, other than airplanes, motor vehicles and trailers. As used in this subdivision, the term "feed additives" means tangible personal property which, when mixed with feed for livestock or poultry, is to be used in the feeding of livestock or poultry. **As used in this subdivision, the term "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide carriers used to improve or enhance the effect of a pesticide.** As used in this subdivision, the term "farm machinery" means new or used farm tractors and such other new or used farm machinery and equipment and repair or replacement parts thereon **and lubricants used exclusively for such farm machinery and equipment** and one-half of each purchaser's purchase of diesel fuel therefor which is:

(a) Used exclusively for agricultural purposes;

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

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

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

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

(b) Regulated utility sellers shall determine whether individual purchases are exempt or nonexempt based upon the seller's utility service rate classifications as contained in tariffs on file with and approved by the Missouri public service commission. Sales and purchases made pursuant to the rate classification "residential" and sales to and purchases made by or on behalf of the occupants of residential apartments or condominiums through a single or master meter, including service for

common areas and facilities and vacant units, shall be considered as sales made for domestic use and such sales shall be exempt from sales tax. Sellers shall charge sales tax upon the entire amount of purchases classified as nondomestic use. The seller's utility service rate classification and the provision of service thereunder shall be conclusive as to whether or not the utility must charge sales tax;

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

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

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

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

(27) All sales made to an interstate compact agency created pursuant to sections 70.370 to [70.440] **70.430**, RSMo, or sections 238.010 to 238.100, RSMo, in the exercise of the functions and activities of such agency as provided pursuant to the compact;

(28) Computers, computer software and computer security systems purchased for use by architectural or engineering firms headquartered in this state. For the purposes of this subdivision, "headquartered in this state" means the office for the administrative management of at least four integrated facilities operated by the taxpayer is located in the state of Missouri;

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

(30) All sales of barges which are to be used primarily in the transportation of property or cargo on interstate waterways[.];

(31) Electrical energy or gas, whether natural, artificial or propane, which is ultimately consumed in connection with the manufacturing of cellular glass products;

(32) All sales of retreading or recapping equipment, supplies or materials; tire

carcasses; uncured rubber; or retreaded or recapped tires to any business which retreads or recaps or resells at retail any retreaded or recapped tires;

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

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

(35) Machines or parts for machines used in a commercial, coin-operated amusement and vending business where sales tax is paid on the gross receipts derived from the use of commercial, coin-operated amusement and vending machines;

(36) Admission charged for the all hunting or taking of domestically raised pheasant, partridge, quail and ungulates on Licensed Shooting Areas permitted by the Missouri Department of Conservation and on all sales of feed and equipment used in the domestic production of pheasant, partridge, quail and ungulates by holders of a Class I Wildlife Breeders Permit issued by the Missouri Department of Conservation;

(37) Any equipment purchased by a federally licensed commercial or public broadcast station when such equipment purchase is made as a result of a federal mandate or technological change. This exemption does not apply to replacement of equipment necessitated as a result of use or equipment replaced due to damage or theft. As used in this subdivision, the following terms shall mean:

(a) "Equipment", such equipment as may be necessary for the broadcast station to fulfill those obligations as set forth under federal guidelines;

(b) "Federally licensed commercial or public broadcast station", any enterprise, either commercial or noncommercial, which operates under a license granted by the Federal Communications Commission for the purpose of the free distribution of audio or video services when such distribution occurs by means of transmission over the public airwaves; and

(c) "Federal mandate", any action of the Congress of the United States or any federal regulatory agency having jurisdiction with regard to broadcast stations when such action requires broadcasters to alter methods of operation.

(38) All sales to political subdivisions of Missouri or of any other state;

(39) All purchases by a contractor on behalf of an entity located in another state, provided that the entity is authorized to issue a certificate of exemption for purchases to a contractor under the provisions of that state's laws. For purposes of this subdivision, the term "certificate of exemption" shall mean any document evidencing that the entity is exempt from sale and use taxes on purchases pursuant to the laws of the state in which the entity is located. Any contractor making purchases on behalf of such entity shall maintain a copy of the entity's exemption certificate as evidence of the exemption. If the exemption certificate issued by the exempt entity to the contractor is later determined by the director of revenue to be invalid for any reason and the contractor has accepted the certificate in good faith, neither the contractor or the exempt entity shall be liable for the payment of any taxes, interest and penalty due as the result of use of the invalid exemption certificate. Materials shall be exempt from all state and local sales and use taxes when purchased by a contractor for the purpose of fabricating tangible personal property which is used in fulfilling a contract for the purpose of constructing, repairing or remodeling facilities for the following:

(a) An exempt entity located in this state, if the entity is one of those entities able to

issue project exemption certificates in accordance with the provisions of section 144.062, RSMo; or

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

144.034. The sales of **made-for-hire motion picture film or video productions produced all or in part in Missouri and** advertising by legal newspapers pursuant to chapter 493, RSMo, advertising agencies, broadcast stations, and standardized outdoor billboard advertising shall be considered the sale of a service and not the sale of tangible personal property. Purchases of tangible personal property which are for use in producing advertising by the businesses listed in the preceding sentence shall be deemed to be purchases for use or consumption and not for resale. In addition to the exemptions granted under the provisions of section 144.030, the sale of services as defined in this section shall be specifically exempted from the provisions of sections 66.600 to 66.635, RSMo, sections 67.500 to 67.545, RSMo, sections 92.400 to 92.420, RSMo, sections 94.500 to 94.570, RSMo, sections 94.600 to 94.655, RSMo, sections 94.700 to 94.755, RSMo, and sections 144.010 to 144.510 and 144.600 to 144.745 and from the computation of the tax levied, assessed or payable under sections 66.600 to 66.635, RSMo, sections 67.500 to 67.545, RSMo, sections 92.400 to 92.420, RSMo, sections 94.500 to 94.570, RSMo, sections 94.600 to 94.655, RSMo, sections 94.700 to 94.755, RSMo, and sections 144.010 to 144.510 and 144.600 to 144.745.

Section 1. In addition to the exemptions granted pursuant to section 144.030, RSMo, there shall also be specifically exempted from the provisions of sections 66.600 to 66.635, RSMo, sections 67.500 to 67.545, RSMo, sections 92.400 to 92.420, RSMo, sections 94.500 to 94.570, RSMo, sections 94.600 to 94.655, RSMo, sections 94.700 to 94.755, RSMo, and sections 144.010 to 144.510, RSMo, and sections 144.600 to 144.745, RSMo, and from the computation of the tax levied, assessed or payable pursuant to sections 66.600 to 66.635, RSMo, sections 67.500 to 67.545, RSMo, sections 92.400 to 92.420, RSMo, sections 94.500 to 94.570, RSMo, sections 94.600 to 94.655, RSMo, sections 94.700 to 94.755, RSMo, and sections 144.010 to 144.510, RSMo, and sections 144.600 to 144.745, RSMo, tangible personal property purchased or leased by a qualified film production company doing business in this state. For purposes of this subdivision, "qualified film production company" shall mean any film production company with an expected in-state expenditure budget in excess of three hundred thousand dollars, and so certified as such by the Missouri film commission within the department of economic development.