

FIRST REGULAR SESSION

# HOUSE BILL NO. 578

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES FUNDERBURK (Sponsor), LAFAVER, MCCAHERTY,  
ENGLISH AND WRIGHT (Co-sponsors).

1067L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 144.010, 144.030, and 144.605, RSMo, and to enact in lieu thereof three new sections relating to the determination of what are business activities within this state.

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

Section A. Sections 144.010, 144.030, and 144.605, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 144.010, 144.030, and 144.605, to read as follows:

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

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

(2) "Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect, and the classification of which business is of such character as to be subject to the terms of sections 144.010 to 144.525. **A person is "engaging in business" in this state for purposes of sections 144.010 to 144.525 if such person "engages in business in this state" or "maintains a place of business in this state" under section 144.605.** The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business, does not constitute engaging in business within the meaning of sections 144.010 to 144.525 unless the total amount of the gross receipts from such sales, exclusive of receipts from the sale of

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 tangible personal property by persons which property is sold in the course of the partial or  
17 complete liquidation of a household, farm or nonbusiness enterprise, exceeds three thousand  
18 dollars in any calendar year. The provisions of this subdivision shall not be construed to make  
19 any sale of property which is exempt from sales tax or use tax on June 1, 1977, subject to that  
20 tax thereafter;

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

26 (4) "Gross receipts", except as provided in section 144.012, means the total amount of  
27 the sale price of the sales at retail including any services other than charges incident to the  
28 extension of credit that are a part of such sales made by the businesses herein referred to, capable  
29 of being valued in money, whether received in money or otherwise; except that, the term "gross  
30 receipts" shall not include the sale price of property returned by customers when the full sale  
31 price thereof is refunded either in cash or by credit. In determining any tax due under sections  
32 144.010 to 144.525 on the gross receipts, charges incident to the extension of credit shall be  
33 specifically exempted. For the purposes of sections 144.010 to 144.525 the total amount of the  
34 sale price above mentioned shall be deemed to be the amount received. It shall also include the  
35 lease or rental consideration where the right to continuous possession or use of any article of  
36 tangible personal property is granted under a lease or contract and such transfer of possession  
37 would be taxable if outright sale were made and, in such cases, the same shall be taxable as if  
38 outright sale were made and considered as a sale of such article, and the tax shall be computed  
39 and paid by the lessee upon the rentals paid;

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

44 (6) "Motor vehicle leasing company" shall be a company obtaining a permit from the  
45 director of revenue to operate as a motor vehicle leasing company. Not all persons renting or  
46 leasing trailers or motor vehicles need to obtain such a permit; however, no person failing to  
47 obtain such a permit may avail itself of the optional tax provisions of subsection 5 of section  
48 144.070, as hereinafter provided;

49 (7) "Person" includes any individual, firm, copartnership, joint adventure, association,  
50 corporation, municipal or private, and whether organized for profit or not, state, county, political  
51 subdivision, state department, commission, board, bureau or agency, except the state

52 transportation department, estate, trust, business trust, receiver or trustee appointed by the state  
53 or federal court, syndicate, or any other group or combination acting as a unit, and the plural as  
54 well as the singular number;

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

57 (9) "Research or experimentation activities" are the development of an experimental or  
58 pilot model, plant process, formula, invention or similar property, and the improvement of  
59 existing property of such type. Research or experimentation activities do not include activities  
60 such as ordinary testing or inspection of materials or products for quality control, efficiency  
61 surveys, advertising promotions or research in connection with literary, historical or similar  
62 projects;

63 (10) "Sale" or "sales" includes installment and credit sales, and the exchange of  
64 properties as well as the sale thereof for money, every closed transaction constituting a sale, and  
65 means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means  
66 whatsoever, of tangible personal property for valuable consideration and the rendering,  
67 furnishing or selling for a valuable consideration any of the substances, things and services  
68 herein designated and defined as taxable under the terms of sections 144.010 to 144.525;

69 (11) "Sale at retail" means any transfer made by any person engaged in business as  
70 defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use  
71 or consumption and not for resale in any form as tangible personal property, for a valuable  
72 consideration; except that, for the purposes of sections 144.010 to 144.525 and the tax imposed  
73 thereby: (i) purchases of tangible personal property made by duly licensed physicians, dentists,  
74 optometrists and veterinarians and used in the practice of their professions shall be deemed to  
75 be purchases for use or consumption and not for resale; and (ii) the selling of computer printouts,  
76 computer output or microfilm or microfiche and computer-assisted photo compositions to a  
77 purchaser to enable the purchaser to obtain for his or her own use the desired information  
78 contained in such computer printouts, computer output on microfilm or microfiche and  
79 computer-assisted photo compositions shall be considered as the sale of a service and not as the  
80 sale of tangible personal property. Where necessary to conform to the context of sections  
81 144.010 to 144.525 and the tax imposed thereby, the term "sale at retail" shall be construed to  
82 embrace:

83 (a) Sales of admission tickets, cash admissions, charges and fees to or in places of  
84 amusement, entertainment and recreation, games and athletic events;

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

87 (c) Sales of local and long distance telecommunications service to telecommunications  
88 subscribers and to others through equipment of telecommunications subscribers for the  
89 transmission of messages and conversations, and the sale, rental or leasing of all equipment or  
90 services pertaining or incidental thereto;

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

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

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

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

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

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

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

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

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

117 (d) Cable or satellite television or music services; and

118 (15) "Product which is intended to be sold ultimately for final use or consumption"  
119 means tangible personal property, or any service that is subject to state or local sales or use taxes,  
120 or any tax that is substantially equivalent thereto, in this state or any other state.

121 2. For purposes of the taxes imposed under sections 144.010 to 144.525, and any other  
122 provisions of law pertaining to sales or use taxes which incorporate the provisions of sections

123 144.010 to 144.525 by reference, the term "manufactured homes" shall have the same meaning  
124 given it in section 700.010.

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

144.030. 1. There is hereby specifically exempted from the provisions of sections  
2 144.010 to 144.525 and from the computation of the tax levied, assessed or payable pursuant to  
3 sections 144.010 to 144.525 such retail sales as may be made in commerce between this state and  
4 any other state of the United States, or between this state and any foreign country, and any retail  
5 sale which the state of Missouri is prohibited from taxing pursuant to the Constitution or laws  
6 of the United States of America, and such retail sales of tangible personal property which the  
7 general assembly of the state of Missouri is prohibited from taxing or further taxing by the  
8 constitution of this state.

9 2. There are also specifically exempted from the provisions of the local sales tax law as  
10 defined in section 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to  
11 144.761 and from the computation of the tax levied, assessed or payable pursuant to the local  
12 sales tax law as defined in section 32.085, section 238.235, and sections 144.010 to 144.525 and  
13 144.600 to 144.745:

14 (1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of  
15 such excise tax is refunded pursuant to section 142.824; or upon the sale at retail of fuel to be  
16 consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing  
17 water to be sold ultimately at retail; or feed for livestock or poultry; or grain to be converted into  
18 foodstuffs which are to be sold ultimately in processed form at retail; or seed, limestone or  
19 fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested will  
20 be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at  
21 retail; economic poisons registered pursuant to the provisions of the Missouri pesticide  
22 registration law (sections 281.220 to 281.310) which are to be used in connection with the  
23 growth or production of crops, fruit trees or orchards applied before, during, or after planting,  
24 the crop of which when harvested will be sold at retail or will be converted into foodstuffs which  
25 are to be sold ultimately in processed form at retail;

26 (2) Materials, manufactured goods, machinery and parts which when used in  
27 manufacturing, processing, compounding, mining, producing or fabricating become a component  
28 part or ingredient of the new personal property resulting from such manufacturing, processing,  
29 compounding, mining, producing or fabricating and which new personal property is intended to  
30 be sold ultimately for final use or consumption; and materials, including without limitation,  
31 gases and manufactured goods, including without limitation slagging materials and firebrick,  
32 which are ultimately consumed in the manufacturing process by blending, reacting or interacting

33 with or by becoming, in whole or in part, component parts or ingredients of steel products  
34 intended to be sold ultimately for final use or consumption;

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

38 (4) Motor vehicles registered in excess of fifty-four thousand pounds, and the trailers  
39 pulled by such motor vehicles, that are actually used in the normal course of business to haul  
40 property on the public highways of the state, and that are capable of hauling loads commensurate  
41 with the motor vehicle's registered weight; and the materials, replacement parts, and equipment  
42 purchased for use directly upon, and for the repair and maintenance or manufacture of such  
43 vehicles. For purposes of this subdivision "motor vehicle" and "public highway" shall have the  
44 meaning as ascribed in section 390.020;

45 (5) Replacement machinery, equipment, and parts and the materials and supplies solely  
46 required for the installation or construction of such replacement machinery, equipment, and  
47 parts, used directly in manufacturing, mining, fabricating or producing a product which is  
48 intended to be sold ultimately for final use or consumption; and machinery and equipment, and  
49 the materials and supplies required solely for the operation, installation or construction of such  
50 machinery and equipment, purchased and used to establish new, or to replace or expand existing,  
51 material recovery processing plants in this state. For the purposes of this subdivision, a "material  
52 recovery processing plant" means a facility that has as its primary purpose the recovery of  
53 materials into a useable product or a different form which is used in producing a new product and  
54 shall include a facility or equipment which are used exclusively for the collection of recovered  
55 materials for delivery to a material recovery processing plant but shall not include motor vehicles  
56 used on highways. For purposes of this section, the terms motor vehicle and highway shall have  
57 the same meaning pursuant to section 301.010. Material recovery is not the reuse of materials  
58 within a manufacturing process or the use of a product previously recovered. The material  
59 recovery processing plant shall qualify under the provisions of this section regardless of  
60 ownership of the material being recovered;

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

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

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

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

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

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

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

81 (13) Electrical energy used in the actual primary manufacture, processing, compounding,  
82 mining or producing of a product, or electrical energy used in the actual secondary processing  
83 or fabricating of the product, or a material recovery processing plant as defined in subdivision  
84 (5) of this subsection, in facilities owned or leased by the taxpayer, if the total cost of electrical  
85 energy so used exceeds ten percent of the total cost of production, either primary or secondary,  
86 exclusive of the cost of electrical energy so used or if the raw materials used in such processing  
87 contain at least twenty-five percent recovered materials as defined in section 260.200. There  
88 shall be a rebuttable presumption that the raw materials used in the primary manufacture of  
89 automobiles contain at least twenty-five percent recovered materials. For purposes of this  
90 subdivision, "processing" means any mode of treatment, act or series of acts performed upon  
91 materials to transform and reduce them to a different state or thing, including treatment necessary  
92 to maintain or preserve such processing by the producer at the production facility;

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

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

99 (16) Machinery, equipment, appliances and devices purchased or leased and used solely  
100 for the purpose of preventing, abating or monitoring water pollution, and materials and supplies  
101 solely required for the installation, construction or reconstruction of such machinery, equipment,  
102 appliances and devices;

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

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

110 (19) All sales of insulin and prosthetic or orthopedic devices as defined on January 1,  
111 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of  
112 1965, including the items specified in Section 1862(a)(12) of that act, and also specifically  
113 including hearing aids and hearing aid supplies and all sales of drugs which may be legally  
114 dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to  
115 administer those items, including samples and materials used to manufacture samples which may  
116 be dispensed by a practitioner authorized to dispense such samples and all sales or rental of  
117 medical oxygen, home respiratory equipment and accessories, hospital beds and accessories and  
118 ambulatory aids, all sales or rental of manual and powered wheelchairs, stairway lifts, Braille  
119 writers, electronic Braille equipment and, if purchased or rented by or on behalf of a person with  
120 one or more physical or mental disabilities to enable them to function more independently, all  
121 sales or rental of scooters, reading machines, electronic print enlargers and magnifiers, electronic  
122 alternative and augmentative communication devices, and items used solely to modify motor  
123 vehicles to permit the use of such motor vehicles by individuals with disabilities or sales of  
124 over-the-counter or nonprescription drugs to individuals with disabilities, and drugs required by  
125 the Food and Drug Administration to meet the over-the-counter drug product labeling  
126 requirements in 21 CFR 201.66, or its successor, as prescribed by a health care practitioner  
127 licensed to prescribe;

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

132 (21) All sales of aircraft to common carriers for storage or for use in interstate commerce  
133 and all sales made by or to not-for-profit civic, social, service or fraternal organizations,  
134 including fraternal organizations which have been declared tax-exempt organizations pursuant  
135 to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, in their civic or  
136 charitable functions and activities and all sales made to eleemosynary and penal institutions and  
137 industries of the state, and all sales made to any private not-for-profit institution of higher  
138 education not otherwise excluded pursuant to subdivision (20) of this subsection or any

139 institution of higher education supported by public funds, and all sales made to a state relief  
140 agency in the exercise of relief functions and activities;

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

148 (23) All sales made to any private not-for-profit elementary or secondary school, all sales  
149 of feed additives, medications or vaccines administered to livestock or poultry in the production  
150 of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for  
151 food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber,  
152 all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying  
153 agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as  
154 defined in section 142.028, natural gas, propane, and electricity used by an eligible new  
155 generation cooperative or an eligible new generation processing entity as defined in section  
156 348.432, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and  
157 trailers, and any freight charges on any exempt item. As used in this subdivision, the term "feed  
158 additives" means tangible personal property which, when mixed with feed for livestock or  
159 poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term  
160 "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and other assorted  
161 pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark  
162 the application of pesticides and herbicides for the production of crops, livestock or poultry. As  
163 used in this subdivision, the term "farm machinery and equipment" means new or used farm  
164 tractors and such other new or used farm machinery and equipment and repair or replacement  
165 parts thereon and any accessories for and upgrades to such farm machinery and equipment, rotary  
166 mowers used exclusively for agricultural purposes, and supplies and lubricants used exclusively,  
167 solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants,  
168 chukar, quail, or for producing milk for ultimate sale at retail, including field drain tile, and  
169 one-half of each purchaser's purchase of diesel fuel therefor which is:

170 (a) Used exclusively for agricultural purposes;

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

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

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

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

187 (b) Regulated utility sellers shall determine whether individual purchases are exempt or  
188 nonexempt based upon the seller's utility service rate classifications as contained in tariffs on file  
189 with and approved by the Missouri public service commission. Sales and purchases made  
190 pursuant to the rate classification "residential" and sales to and purchases made by or on behalf  
191 of the occupants of residential apartments or condominiums through a single or master meter,  
192 including service for common areas and facilities and vacant units, shall be considered as sales  
193 made for domestic use and such sales shall be exempt from sales tax. Sellers shall charge sales  
194 tax upon the entire amount of purchases classified as nondomestic use. The seller's utility  
195 service rate classification and the provision of service thereunder shall be conclusive as to  
196 whether or not the utility must charge sales tax;

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

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

214 (26) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071,  
215 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of  
216 revenue shall promulgate rules pursuant to chapter 536 to eliminate all state and local sales taxes  
217 on such excise taxes;

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

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

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

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

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

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

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

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

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

245 (36) All sales of feed which are developed for and used in the feeding of pets owned by  
246 a commercial breeder when such sales are made to a commercial breeder, as defined in section  
247 273.325, and licensed pursuant to sections 273.325 to 273.357;

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

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

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

267 (38) All sales or other transfers of tangible personal property to a lessor who leases the  
268 property under a lease of one year or longer executed or in effect at the time of the sale or other  
269 transfer to an interstate compact agency created pursuant to sections 70.370 to 70.441 or sections  
270 238.010 to 238.100;

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

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

280 (41) Beginning January 1, 2009, but not after January 1, 2015, materials, replacement  
281 parts, and equipment purchased for use directly upon, and for the modification, replacement,  
282 repair, and maintenance of aircraft, aircraft power plants, and aircraft accessories;

283 (42) Sales of sporting clays, wobble, skeet, and trap targets to any shooting range or  
284 similar places of business for use in the normal course of business and money received by a  
285 shooting range or similar places of business from patrons and held by a shooting range or similar  
286 place of business for redistribution to patrons at the conclusion of a shooting event.

287 **3. Any ruling, agreement, or contract, whether written or oral, express or implied,**  
288 **between a person and this state's executive branch, or any other state agency or**  
289 **department, stating, agreeing, or ruling that such person is not required to collect sales and**  
290 **use tax in this state despite the presence of a warehouse, distribution center, or fulfillment**  
291 **center in this state that is owned or operated by the person or an affiliated person shall be**  
292 **null and void unless it is specifically approved by a majority vote of each of the houses of**  
293 **the general assembly. For purposes of this subsection, an "affiliated person" means any**  
294 **person that is a member of the same "controlled group of corporations" as defined in**  
295 **Section 1563(a) of the Internal Revenue Code of 1986, as amended, as the vendor or any**  
296 **other entity that, notwithstanding its form of organization, bears the same ownership**  
297 **relationship to the vendor as a corporation that is a member of the same "controlled group**  
298 **of corporations" as defined in Section 1563(a) of the Internal Revenue Code, as amended.**

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

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

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

6 (a) [Purposefully or systematically exploiting the market provided by this state by any  
7 media-assisted, media-facilitated, or media-solicited means, including, but not limited to, direct  
8 mail advertising, distribution of catalogs, computer-assisted shopping, telephone, television,  
9 radio, or other electronic media, or magazine or newspaper advertisements, or other media; or

10 (b) Being owned or controlled by the same interests which own or control any seller  
11 engaged in the same or similar line of business in this state; or

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

15 [(d)] (b) Soliciting sales or taking orders by sales agents or traveling representatives;

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

19           **a. Sells a similar line of products as the vendor and does so under the same or a**  
20 **similar business name;**

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

24           **c. Delivers, installs, assembles, or performs maintenance services for the vendor's**  
25 **customers within the state;**

26           **d. Facilitates the vendor's delivery of property to customers in the state by allowing**  
27 **the vendor's customers to pick up property sold by the vendor at an office, distribution**  
28 **facility, warehouse, storage place, or similar place of business maintained by the person in**  
29 **the state; or**

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

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

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

43           **(f) The presumption in paragraph (e) may be rebutted by submitting proof that the**  
44 **residents with whom the vendor has an agreement did not engage in any activity within the**  
45 **state that was significantly associated with the vendor's ability to establish or maintain the**  
46 **vendor's market in the state during the preceding twelve months. Such proof may consist**  
47 **of sworn written statements from all of the residents with whom the vendor has an**  
48 **agreement stating that they did not engage in any solicitation in the state on behalf of the**  
49 **vendor during the preceding year provided that such statements were provided and**  
50 **obtained in good faith;**

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

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

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

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

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

74 (8) "Sales price", the consideration including the charges for services, except charges  
75 incident to the extension of credit, paid or given, or contracted to be paid or given, by the  
76 purchaser to the vendor for the tangible personal property, including any services that are a part  
77 of the sale, valued in money, whether paid in money or otherwise, and any amount for which  
78 credit is given to the purchaser by the vendor, without any deduction therefrom on account of the  
79 cost of the property sold, the cost of materials used, labor or service cost, losses or any other  
80 expenses whatsoever, except that cash discounts allowed and taken on sales shall not be included  
81 and "sales price" shall not include the amount charged for property returned by customers upon  
82 rescission of the contract of sales when the entire amount charged therefor is refunded either in  
83 cash or credit or the amount charged for labor or services rendered in installing or applying the  
84 property sold, the use, storage or consumption of which is taxable pursuant to sections 144.600  
85 to 144.745. In determining the amount of tax due pursuant to sections 144.600 to 144.745, any  
86 charge incident to the extension of credit shall be specifically exempted;

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

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

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

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

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

103 (14) "Vendor", every person engaged in making sales of tangible personal property by  
104 mail order, by advertising, by agent or peddling tangible personal property, soliciting or taking  
105 orders for sales of tangible personal property, for storage, use or consumption in this state, all  
106 salesmen, solicitors, hawkers, representatives, consignees, peddlers or canvassers, as agents of  
107 the dealers, distributors, consignors, supervisors, principals or employers under whom they  
108 operate or from whom they obtain the tangible personal property sold by them, and every person  
109 who maintains a place of business in this state, maintains a stock of goods in this state, or  
110 engages in business activities within this state and every person who engages in this state in the  
111 business of acting as a selling agent for persons not otherwise vendors as defined in this  
112 subdivision. Irrespective of whether they are making sales on their own behalf or on behalf of  
113 the dealers, distributors, consignors, supervisors, principals or employers, they must be regarded  
114 as vendors and the dealers, distributors, consignors, supervisors, principals or employers must  
115 be regarded as vendors for the purposes of sections 144.600 to 144.745. [A person shall not be  
116 considered a vendor for the purposes of sections 144.600 to 144.745 if all of the following apply:

117 (a) The person's total gross receipts did not exceed five hundred thousand dollars in this  
118 state, or twelve and one-half million dollars in the entire United States, in the immediately  
119 preceding calendar year;

120 (b) The person maintains no place of business in this state; and

121 (c) The person has no selling agents in this state.]

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