

FIRST REGULAR SESSION

HOUSE BILL NO. 117

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BURLISON.

0503H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 144.010, 144.018, and 144.020, RSMo, and to enact in lieu thereof three new sections relating to sales tax.

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

Section A. Sections 144.010, 144.018, and 144.020, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 144.010, 144.018, and 144.020, to read as follows: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 tangible personal property by persons which property is sold in the course of the partial or complete

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.

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

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

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

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

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

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

52 or federal court, syndicate, or any other group or combination acting as a unit, and the plural as
53 well as the singular number;

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

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

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

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

82 (a) Sales of admission tickets[, cash admissions,] **and** charges and fees **for admission**
83 to [or in places of amusement, entertainment and recreation, games and athletic events] **view**
84 **sporting events, dance performances, theater performances, orchestra, concerts, and other**
85 **performing arts productions, and amounts paid for admission to racetracks, arcades,**
86 **theme and amusement parks, water parks, circuses, carnivals, festivals, air shows,**
87 **museums, marinas, motion picture theaters, and other commercial attractions. Such tax**

88 **shall not include any sales regardless of how offered and sold as a right of first refusal,**
89 **right to purchase, single admission ticket, bundled package or season pass for admission**
90 **and seating accommodations, or fees paid to or in any place having an exemption under**
91 **subdivision (20), (21), or (22) of subsection 2 of section 144.030. Such sales shall not**
92 **include the amount paid that results in the first opportunity to purchase or decline tickets**
93 **for admission to events, but does not itself result in admission;**

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

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

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

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

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

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

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

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

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

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

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

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

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

131 2. For purposes of the taxes imposed under sections 144.010 to 144.525, and any other
132 provisions of law pertaining to sales or use taxes which incorporate the provisions of sections
133 144.010 to 144.525 by reference, the term "manufactured homes" shall have the same meaning
134 given it in section 700.010.

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

144.018. 1. Notwithstanding any other provision of law to the contrary, except as
2 provided under subsection 2 or 3 of this section, when a purchase of tangible personal property
3 or service subject to tax is made for the purpose of resale, such purchase shall be either exempt
4 or excluded under this chapter if the subsequent sale is:

5 (1) Subject to a tax in this or any other state;

6 (2) For resale;

7 (3) Excluded from tax under this chapter;

8 (4) Subject to tax but exempt under this chapter; or

9 (5) Exempt from the sales tax laws of another state, if the subsequent sale is in such
10 other state.

11 The purchase of tangible personal property by a taxpayer shall not be deemed to be for resale if
12 such property is used or consumed by the taxpayer in providing a service on which tax is not
13 imposed by subsection 1 of section 144.020, except purchases made in fulfillment of any
14 obligation under a defense contract with the United States government.

15 2. For purposes of subdivision (2) of subsection 1 of section 144.020, a place of
16 amusement, entertainment or recreation, including games or athletic events, shall remit tax on
17 the amount paid for admissions or seating accommodations[, or fees paid] to[, or in] such place
18 of amusement, entertainment or recreation. Any subsequent sale of such admissions or seating
19 accommodations shall not be subject to tax if the initial sale was an arms length transaction for
20 fair market value with an unaffiliated entity. If the sale of such admissions or seating
21 accommodations is exempt or excluded from payment of sales and use taxes, the provisions of
22 this subsection shall not require the place of amusement, entertainment, or recreation to remit
23 tax on that sale. **Such sales under subdivision (2) of subsection 1 of section 144.020 shall**
24 **include sales of admission tickets and charges and fees for admission to view sporting**

25 **events, dance performances, theater performances, orchestra, concerts and other**
26 **performing arts productions, and amounts paid for admission to racetracks, arcades,**
27 **theme and amusement parks, water parks, circuses, carnivals, festivals, air shows,**
28 **museums, marinas, motion picture theaters, and other commercial attractions. Such tax**
29 **shall not include any sales regardless of how offered and sold as a right of first refusal,**
30 **right to purchase, single admission ticket, bundled package or season pass for admission**
31 **and seating accommodations, or charges or, fees paid to or in any place having an**
32 **exemption under subdivision (20), (21), or (22) of subsection 2 of section 144.030. Such**
33 **sales shall not include the amount paid that results in the first opportunity to purchase or**
34 **decline tickets for admission to events, but does not itself result in admission.**

35 3. For purposes of subdivision (6) of subsection 1 of section 144.020, a hotel, motel,
36 tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp, or other
37 place in which rooms, meals, or drinks are regularly served to the public shall remit tax on the
38 amount of sales or charges for all rooms, meals, and drinks furnished at such hotel, motel, tavern,
39 inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp, or other place in
40 which rooms, meals, or drinks are regularly served to the public. Any subsequent sale of such
41 rooms, meals, or drinks shall not be subject to tax if the initial sale was an arms length
42 transaction for fair market value with an unaffiliated entity. If the sale of such rooms, meals, or
43 drinks is exempt or excluded from payment of sales and use taxes, the provisions of this
44 subsection shall not require the hotel, motel, tavern, inn, restaurant, eating house, drugstore,
45 dining car, tourist cabin, tourist camp, or other place in which rooms, meals, or drinks are
46 regularly served to the public to remit tax on that sale.

47 4. The provisions of this section are intended to reject and abrogate earlier case law
48 interpretations of the state's sales and use tax law with regard to sales for resale as extended in
49 Music City Centre Management, LLC v. Director of Revenue, 295 S.W.3d 465, (Mo. 2009) and
50 ICC Management, Inc. v. Director of Revenue, 290 S.W.3d 699, (Mo. 2009). The provisions
51 of this section are intended to clarify the exemption or exclusion of purchases for resale from
52 sales and use taxes as originally enacted in this chapter.

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

7 (1) Upon every retail sale in this state of tangible personal property, excluding motor
8 vehicles, trailers, motorcycles, mopeds, motortricycles, boats and outboard motors required to

9 be titled under the laws of the state of Missouri and subject to tax under subdivision (9) of this
10 subsection, a tax equivalent to four percent of the purchase price paid or charged, or in case such
11 sale involves the exchange of property, a tax equivalent to four percent of the consideration paid
12 or charged, including the fair market value of the property exchanged at the time and place of
13 the exchange, except as otherwise provided in section 144.025;

14 (2) A tax equivalent to four percent of the amount paid for admission **tickets** and
15 [seating accommodations, or] **charges and** fees [paid] to[, or in any place of amusement,
16 entertainment or recreation, games and athletic events] **view sporting events, dance**
17 **performances, theater performances, orchestra, concerts and other performing arts**
18 **productions, and amounts paid for admission to racetracks, arcades, theme and**
19 **amusement parks, water parks, circuses, carnivals, festivals, air shows, museums, marinas,**
20 **motion picture theaters, and other commercial attractions. Such tax shall not include any**
21 **sales regardless of how offered and sold as a right of first refusal, right to purchase, single**
22 **admission ticket, bundled package or season pass for admission and seating**
23 **accommodations, or fees paid to or in any place having an exemption under subdivision**
24 **(20), (21), or (22) of subsection 2 of section 144.030. Such sales shall not include the**
25 **amount paid that results in the first opportunity to purchase or decline tickets for**
26 **admission to events, but does not itself result in admission;**

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

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

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

39 (6) A tax equivalent to four percent on the amount of sales or charges for all rooms,
40 meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore,
41 dining car, tourist cabin, tourist camp or other place in which rooms, meals or drinks are
42 regularly served to the public;

43 (7) A tax equivalent to four percent of the amount paid or charged for intrastate tickets
44 by every person operating a railroad, sleeping car, dining car, express car, boat, airplane and such

45 buses and trucks as are licensed by the division of motor carrier and railroad safety of the
46 department of economic development of Missouri, engaged in the transportation of persons for
47 hire;

48 (8) A tax equivalent to four percent of the amount paid or charged for rental or lease of
49 tangible personal property, provided that if the lessor or renter of any tangible personal property
50 had previously purchased the property under the conditions of "sale at retail" or leased or rented
51 the property and the tax was paid at the time of purchase, lease or rental, the lessor, sublessor,
52 renter or subrenter shall not apply or collect the tax on the subsequent lease, sublease, rental or
53 subrental receipts from that property. The purchase, rental or lease of motor vehicles, trailers,
54 motorcycles, mopeds, motortricycles, boats, and outboard motors shall be taxed and the tax paid
55 as provided in this section and section 144.070. In no event shall the rental or lease of boats and
56 outboard motors be considered a sale, charge, or fee to, for or in places of amusement,
57 entertainment or recreation nor shall any such rental or lease be subject to any tax imposed to,
58 for, or in such places of amusement, entertainment or recreation. Rental and leased boats or
59 outboard motors shall be taxed under the provisions of the sales tax laws as provided under such
60 laws for motor vehicles and trailers. Tangible personal property which is exempt from the sales
61 or use tax under section 144.030 upon a sale thereof is likewise exempt from the sales or use tax
62 upon the lease or rental thereof;

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

68 2. All tickets sold which are sold under the provisions of sections 144.010 to 144.525
69 which are subject to the sales tax shall have printed, stamped or otherwise endorsed thereon, the
70 words "This ticket is subject to a sales tax."

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