

SECOND REGULAR SESSION

# HOUSE BILL NO. 1463

## 98TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE BURLISON.

4645H.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Section A. Sections 144.010, 144.018, and 144.020, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 144.010, 144.018, and 144.020, to read as follows: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] **described** in section 277.024, llamas, alpaca,  
41 buffalo, elk documented as obtained from a legal source and not from the wild, goats, horses,  
42 other equine, 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, theme**  
86 **and amusement parks, water parks, circuses, carnivals, festivals, air shows, museums,**  
87 **marinas, motion picture theaters, go-karts, miniature golf, zip lines, individual stand-alone**

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

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

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

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

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

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

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

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

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

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

- 124 (b) Answering services and one-way paging services;
- 125 (c) Private mobile radio services which are not two-way commercial mobile radio  
126 services such as wireless telephone, personal communications services or enhanced specialized  
127 mobile radio services as defined pursuant to federal law; or
- 128 (d) Cable or satellite television or music services; and
- 129 (15) "Product which is intended to be sold ultimately for final use or consumption"  
130 means tangible personal property, or any service that is subject to state or local sales or use taxes,  
131 or any tax that is substantially equivalent thereto, in this state or any other state.
- 132 2. For purposes of the taxes imposed under sections 144.010 to 144.525, and any other  
133 provisions of law pertaining to sales or use taxes which incorporate the provisions of sections  
134 144.010 to 144.525 by reference, the term "manufactured homes" shall have the same meaning  
135 given it in section 700.010.
- 136 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. The purchase of tangible personal property by a taxpayer shall not be deemed to be  
11 for resale if such property is used or consumed by the taxpayer in providing a service on which  
12 tax is not imposed by subsection 1 of section 144.020, except purchases made in fulfillment of  
13 any obligation under a defense contract with the United States government.
- 14 2. For purposes of subdivision (2) of subsection 1 of section 144.020, a place of  
15 amusement, entertainment or recreation, including games or athletic events, shall remit tax on  
16 the amount paid for admissions or seating accommodations[, or fees paid] to[, or in] such place  
17 of amusement, entertainment or recreation. Any subsequent sale of such admissions or seating  
18 accommodations shall not be subject to tax if the initial sale was an arms length transaction for  
19 fair market value with an unaffiliated entity. If the sale of such admissions or seating  
20 accommodations is exempt or excluded from payment of sales and use taxes, the provisions of  
21 this subsection shall not require the place of amusement, entertainment, or recreation to remit  
22 tax on that sale. **Such sales under subdivision (2) of subsection 1 of section 144.020 shall**  
23 **include sales of admission tickets and charges and fees for admission to view sporting**

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

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

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

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

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

43 regularly served to the public. The tax imposed under this subdivision shall not apply to any  
44 automatic mandatory gratuity for a large group imposed by a restaurant when such gratuity is  
45 reported as employee tip income and the restaurant withholds income tax under section 143.191  
46 on such gratuity;

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

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

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

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

✓