

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE NO. 2 FOR

HOUSE BILL NO. 1802

99TH GENERAL ASSEMBLY

5159H.04P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 144.026, 144.030, and 144.054, RSMo, and to enact in lieu thereof two new sections relating to exemptions from sales tax.

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

Section A. Sections 144.026, 144.030, and 144.054, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 144.030 and 144.054, to read as follows:

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

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.

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 usable 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. **For the purposes of this subdivision,**
58 **subdivision (6) of this subsection, and section 144.054, as well as the definition in**
59 **subdivision (9) of subsection 1 of section 144.010, the term "product" includes**
60 **telecommunications services and the term "manufacturing" shall include the production,**
61 **or production and transmission, of telecommunications services. The preceding sentence**
62 **does not make a substantive change in the law and is intended to clarify that the term**
63 **"manufacturing" has included and continues to include the production and transmission**
64 **of "telecommunications services", as enacted in this subdivision and subdivision (6) of this**
65 **subsection, as well as the definition in subdivision (9) of subsection 1 of section 144.010.**
66 **The preceding two sentences reaffirm legislative intent consistent with the interpretation**
67 **of this subdivision and subdivision (6) of this subsection in *Southwestern Bell Tel. Co. v.***
68 ***Director of Revenue*, 78 S.W.3d 763 (Mo. banc 2002), and *Southwestern Bell Tel. Co. v.***
69 ***Director of Revenue*, 182 S.W.3d 226 (Mo. banc 2005), and accordingly abrogates the**
70 **Missouri supreme court's interpretation of those exemptions in *IBM Corporation v.***
71 ***Director of Revenue*, 491 S.W.3d 535 (Mo. banc 2016), to the extent inconsistent with this**
72 **section and *Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d 763 (Mo. banc**
73 **2002), and *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo. banc**
74 **2005). The construction and application of this subdivision as expressed by the Missouri**
75 **supreme court in *DST Systems, Inc. v. Director of Revenue*, 43 S.W.3d 799 (Mo. banc 2001);**
76 ***Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d 763 (Mo. banc 2002); and**
77 ***Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo. banc 2005), is**
78 **hereby affirmed.** Material recovery is not the reuse of materials within a manufacturing process
79 or the use of a product previously recovered. The material recovery processing plant shall
80 qualify under the provisions of this section regardless of ownership of the material being
81 recovered;

82 (6) Machinery and equipment, and parts and the materials and supplies solely required
83 for the installation or construction of such machinery and equipment, purchased and used to
84 establish new or to expand existing manufacturing, mining or fabricating plants in the state if
85 such machinery and equipment is used directly in manufacturing, mining or fabricating a product
86 which is intended to be sold ultimately for final use or consumption. **The construction and**
87 **application of this subdivision as expressed by the Missouri supreme court in *DST Systems,***
88 ***Inc. v. Director of Revenue*, 43 S.W.3d 799 (Mo. banc 2001); *Southwestern Bell Tel. Co. v.***

89 *Director of Revenue, 78 S.W.3d 763 (Mo. banc 2002); and Southwestern Bell Tel. Co. v.*
90 *Director of Revenue, 182 S.W.3d 226 (Mo. banc 2005), is hereby affirmed;*

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

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

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

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

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

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

106 (13) Electrical energy used in the actual primary manufacture, processing, compounding,
107 mining or producing of a product, or electrical energy used in the actual secondary processing
108 or fabricating of the product, or a material recovery processing plant as defined in subdivision
109 (5) of this subsection, in facilities owned or leased by the taxpayer, if the total cost of electrical
110 energy so used exceeds ten percent of the total cost of production, either primary or secondary,
111 exclusive of the cost of electrical energy so used or if the raw materials used in such processing
112 contain at least twenty-five percent recovered materials as defined in section 260.200. There
113 shall be a rebuttable presumption that the raw materials used in the primary manufacture of
114 automobiles contain at least twenty-five percent recovered materials. For purposes of this
115 subdivision, "processing" means any mode of treatment, act or series of acts performed upon
116 materials to transform and reduce them to a different state or thing, including treatment necessary
117 to maintain or preserve such processing by the producer at the production facility;

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

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

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

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

129 (18) All amounts paid or charged for admission or participation or other fees paid by or
130 other charges to individuals in or for any place of amusement, entertainment or recreation, games
131 or athletic events, including museums, fairs, zoos and planetariums, owned or operated by a
132 municipality or other political subdivision where all the proceeds derived therefrom benefit the
133 municipality or other political subdivision and do not inure to any private person, firm, or
134 corporation, provided, however, that a municipality or other political subdivision may enter into
135 revenue-sharing agreements with private persons, firms, or corporations providing goods or
136 services, including management services, in or for the place of amusement, entertainment or
137 recreation, games or athletic events, and provided further that nothing in this subdivision shall
138 exempt from tax any amounts retained by any private person, firm, or corporation under such
139 revenue-sharing agreement;

140 (19) All sales of insulin, and all sales, rentals, repairs, and parts of durable medical
141 equipment, prosthetic devices, and orthopedic devices as defined on January 1, 1980, by the
142 federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including
143 the items specified in Section 1862(a)(12) of that act, and also specifically including hearing aids
144 and hearing aid supplies and all sales of drugs which may be legally dispensed by a licensed
145 pharmacist only upon a lawful prescription of a practitioner licensed to administer those items,
146 including samples and materials used to manufacture samples which may be dispensed by a
147 practitioner authorized to dispense such samples and all sales or rental of medical oxygen, home
148 respiratory equipment and accessories including parts, and hospital beds and accessories and
149 ambulatory aids including parts, and all sales or rental of manual and powered wheelchairs
150 including parts, and stairway lifts, Braille writers, electronic Braille equipment and, if purchased
151 or rented by or on behalf of a person with one or more physical or mental disabilities to enable
152 them to function more independently, all sales or rental of scooters including parts, and reading
153 machines, electronic print enlargers and magnifiers, electronic alternative and augmentative
154 communication devices, and items used solely to modify motor vehicles to permit the use of such
155 motor vehicles by individuals with disabilities or sales of over-the-counter or nonprescription
156 drugs to individuals with disabilities, and drugs required by the Food and Drug Administration
157 to meet the over-the-counter drug product labeling requirements in 21 CFR 201.66, or its
158 successor, as prescribed by a health care practitioner licensed to prescribe;

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

163 (21) All sales of aircraft to common carriers for storage or for use in interstate commerce
164 and all sales made by or to not-for-profit civic, social, service or fraternal organizations,
165 including fraternal organizations which have been declared tax-exempt organizations pursuant
166 to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, in their civic or
167 charitable functions and activities and all sales made to eleemosynary and penal institutions and
168 industries of the state, and all sales made to any private not-for-profit institution of higher
169 education not otherwise excluded pursuant to subdivision (20) of this subsection or any
170 institution of higher education supported by public funds, and all sales made to a state relief
171 agency in the exercise of relief functions and activities;

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

179 (23) All sales made to any private not-for-profit elementary or secondary school, all sales
180 of feed additives, medications or vaccines administered to livestock or poultry in the production
181 of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for
182 food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber,
183 all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying
184 agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as
185 defined in section 142.028, natural gas, propane, and electricity used by an eligible new
186 generation cooperative or an eligible new generation processing entity as defined in section
187 348.432, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and
188 trailers, and any freight charges on any exempt item. As used in this subdivision, the term “feed
189 additives” means tangible personal property which, when mixed with feed for livestock or
190 poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term
191 “pesticides” includes adjuvants such as crop oils, surfactants, wetting agents and other assorted
192 pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark
193 the application of pesticides and herbicides for the production of crops, livestock or poultry. As
194 used in this subdivision, the term “farm machinery and equipment” means new or used farm

195 tractors and such other new or used farm machinery and equipment and repair or replacement
196 parts thereon and any accessories for and upgrades to such farm machinery and equipment, rotary
197 mowers used exclusively for agricultural purposes, and supplies and lubricants used exclusively,
198 solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants,
199 chukar, quail, or for producing milk for ultimate sale at retail, including field drain tile, and
200 one-half of each purchaser's purchase of diesel fuel therefor which is:

201 (a) Used exclusively for agricultural purposes;

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

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

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

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

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

228 (c) Each person making domestic use purchases of services or property and who uses any
229 portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day
230 of the fourth month following the year of purchase, and without assessment, notice or demand,

231 file a return and pay sales tax on that portion of nondomestic purchases. Each person making
232 nondomestic purchases of services or property and who uses any portion of the services or
233 property so purchased for domestic use, and each person making domestic purchases on behalf
234 of occupants of residential apartments or condominiums through a single or master meter,
235 including service for common areas and facilities and vacant units, under a nonresidential utility
236 service rate classification may, between the first day of the first month and the fifteenth day of
237 the fourth month following the year of purchase, apply for credit or refund to the director of
238 revenue and the director shall give credit or make refund for taxes paid on the domestic use
239 portion of the purchase. The person making such purchases on behalf of occupants of residential
240 apartments or condominiums shall have standing to apply to the director of revenue for such
241 credit or refund;

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

245 (26) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071,
246 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of
247 revenue shall promulgate rules pursuant to chapter 536 to eliminate all state and local sales taxes
248 on such excise taxes;

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

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

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

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

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

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

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

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

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

276 (36) All sales of feed which are developed for and used in the feeding of pets owned by
277 a commercial breeder when such sales are made to a commercial breeder, as defined in section
278 273.325, and licensed pursuant to sections 273.325 to 273.357;

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

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

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

298 (38) All sales or other transfers of tangible personal property to a lessor who leases the
299 property under a lease of one year or longer executed or in effect at the time of the sale or other
300 transfer to an interstate compact agency created pursuant to sections 70.370 to 70.441 or sections
301 238.010 to 238.100;

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

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

311 (41) All materials, replacement parts, and equipment purchased for use directly upon,
312 and for the modification, replacement, repair, and maintenance of aircraft, aircraft power plants,
313 and aircraft accessories;

314 (42) Sales of sporting clays, wobble, skeet, and trap targets to any shooting range or
315 similar places of business for use in the normal course of business and money received by a
316 shooting range or similar places of business from patrons and held by a shooting range or similar
317 place of business for redistribution to patrons at the conclusion of a shooting event;

318 (43) All sales of motor fuel, as defined in section 142.800, used in any watercraft, as
319 defined in section 306.010;

320 (44) Any new or used aircraft sold or delivered in this state to a person who is not a
321 resident of this state or a corporation that is not incorporated in this state, and such aircraft is not
322 to be based in this state and shall not remain in this state more than ten business days subsequent
323 to the last to occur of:

324 (a) The transfer of title to the aircraft to a person who is not a resident of this state or a
325 corporation that is not incorporated in this state; or

326 (b) The date of the return to service of the aircraft in accordance with 14 CFR 91.407 for
327 any maintenance, preventive maintenance, rebuilding, alterations, repairs, or installations that
328 are completed contemporaneously with the transfer of title to the aircraft to a person who is not
329 a resident of this state or a corporation that is not incorporated in this state;

330 (45) All internet access or the use of internet access regardless of whether the tax is
331 imposed on a provider of internet access or a buyer of internet access. For purposes of this
332 subdivision, the following terms shall mean:

333 (a) "Direct costs", costs incurred by a governmental authority solely because of an
334 internet service provider's use of the public right-of-way. The term shall not include costs that
335 the governmental authority would have incurred if the internet service provider did not make
336 such use of the public right-of-way. Direct costs shall be determined in a manner consistent with
337 generally accepted accounting principles;

338 (b) "Internet", computer and telecommunications facilities, including equipment and
339 operating software, that comprises the interconnected worldwide network that employ the
340 transmission control protocol or internet protocol, or any predecessor or successor protocols to
341 that protocol, to communicate information of all kinds by wire or radio;

342 (c) "Internet access", a service that enables users to connect to the internet to access
343 content, information, or other services without regard to whether the service is referred to as
344 telecommunications, communications, transmission, or similar services, and without regard to
345 whether a provider of the service is subject to regulation by the Federal Communications
346 Commission as a common carrier under 47 U.S.C. Section 201, et seq. For purposes of this
347 subdivision, internet access also includes: the purchase, use, or sale of communications services,
348 including telecommunications services as defined in section 144.010, to the extent the
349 communications services are purchased, used, or sold to provide the service described in this
350 subdivision or to otherwise enable users to access content, information, or other services offered
351 over the internet; services that are incidental to the provision of a service described in this
352 subdivision, when furnished to users as part of such service, including a home page, electronic
353 mail, and instant messaging, including voice-capable and video-capable electronic mail and
354 instant messaging, video clips, and personal electronic storage capacity; a home page electronic
355 mail and instant messaging, including voice-capable and video-capable electronic mail and
356 instant messaging, video clips, and personal electronic storage capacity that are provided
357 independently or that are not packed with internet access. As used in this subdivision, internet
358 access does not include voice, audio, and video programming or other products and services,
359 except services described in this paragraph or this subdivision, that use internet protocol or any
360 successor protocol and for which there is a charge, regardless of whether the charge is separately
361 stated or aggregated with the charge for services described in this paragraph or this subdivision;

362 (d) "Tax", any charge imposed by the state or a political subdivision of the state for the
363 purpose of generating revenues for governmental purposes and that is not a fee imposed for a
364 specific privilege, service, or benefit conferred, except as described as otherwise under this
365 subdivision, or any obligation imposed on a seller to collect and to remit to the state or a political
366 subdivision of the state any gross retail tax, sales tax, or use tax imposed on a buyer by such a
367 governmental entity. The term tax shall not include any franchise fee or similar fee imposed or
368 authorized under section 67.1830 or 67.2689; Section 622 or 653 of the Communications Act
369 of 1934, 47 U.S.C. Section 542 and 47 U.S.C. Section 573; or any other fee related to obligations
370 of telecommunications carriers under the Communications Act of 1934, 47 U.S.C. Section 151,
371 et seq., except to the extent that:

372 a. The fee is not imposed for the purpose of recovering direct costs incurred by the
373 franchising or other governmental authority from providing the specific privilege, service, or
374 benefit conferred to the payer of the fee; or

375 b. The fee is imposed for the use of a public right-of-way based on a percentage of the
376 service revenue, and the fee exceeds the incremental direct costs incurred by the governmental
377 authority associated with the provision of that right-of-way to the provider of internet access
378 service.

379

380 Nothing in this subdivision shall be interpreted as an exemption from taxes due on goods or
381 services that were subject to tax on January 1, 2016.

382 3. Any ruling, agreement, or contract, whether written or oral, express or implied,
383 between a person and this state's executive branch, or any other state agency or department,
384 stating, agreeing, or ruling that such person is not required to collect sales and use tax in this
385 state despite the presence of a warehouse, distribution center, or fulfillment center in this state
386 that is owned or operated by the person or an affiliated person shall be null and void unless it is
387 specifically approved by a majority vote of each of the houses of the general assembly. For
388 purposes of this subsection, an "affiliated person" means any person that is a member of the
389 same controlled group of corporations as defined in Section 1563(a) of the Internal Revenue
390 Code of 1986, as amended, as the vendor or any other entity that, notwithstanding its form of
391 organization, bears the same ownership relationship to the vendor as a corporation that is a
392 member of the same controlled group of corporations as defined in Section 1563(a) of the
393 Internal Revenue Code, as amended.

144.054. 1. As used in this section, the following terms mean:

2 (1) "Processing", any mode of treatment, act, or series of acts performed upon materials
3 to transform or reduce them to a different state or thing, including treatment necessary to
4 maintain or preserve such processing by the producer at the production facility;

5 (2) **"Producing" includes, but is not limited to, the production of, including the**
6 **production and transmission of, telecommunication services;**

7 (3) **"Product" includes, but is not limited to, telecommunications services;**

8 (4) "Recovered materials", those materials which have been diverted or removed from
9 the solid waste stream for sale, use, reuse, or recycling, whether or not they require subsequent
10 separation and processing.

11 2. In addition to all other exemptions granted under this chapter, there is hereby
12 specifically exempted from the provisions of sections 144.010 to 144.525 and 144.600 to
13 144.761, and from the computation of the tax levied, assessed, or payable under sections 144.010
14 to 144.525 and 144.600 to 144.761, electrical energy and gas, whether natural, artificial, or

15 propane, water, coal, and energy sources, chemicals, machinery, equipment, and materials used
16 or consumed in the manufacturing, processing, compounding, mining, or producing of any
17 product, or used or consumed in the processing of recovered materials, or used in research and
18 development related to manufacturing, processing, compounding, mining, or producing any
19 product. The exemptions granted in this subsection shall not apply to local sales taxes as defined
20 in section 32.085 and the provisions of this subsection shall be in addition to any state and local
21 sales tax exemption provided in section 144.030. **The construction and application of this**
22 **subsection as expressed by the Missouri supreme court in *DST Systems, Inc. v. Director of***
23 ***Revenue*, 43 S.W.3d 799 (Mo. banc 2001); *Southwestern Bell Tel. Co. v. Director of Revenue*,**
24 **78 S.W.3d 763 (Mo. banc 2002); and *Southwestern Bell Tel. Co. v. Director of Revenue*, 182**
25 **S.W.3d 226 (Mo. banc 2005), is hereby affirmed.**

26 3. In addition to all other exemptions granted under this chapter, there is hereby
27 specifically exempted from the provisions of sections 144.010 to 144.525 and 144.600 to
28 144.761, and section 238.235, and the local sales tax law as defined in section 32.085, and from
29 the computation of the tax levied, assessed, or payable under sections 144.010 to 144.525 and
30 144.600 to 144.761, and section 238.235, and the local sales tax law as defined in section 32.085,
31 all utilities, machinery, and equipment used or consumed directly in television or radio
32 broadcasting and all sales and purchases of tangible personal property, utilities, services, or any
33 other transaction that would otherwise be subject to the state or local sales or use tax when such
34 sales are made to or purchases are made by a contractor for use in fulfillment of any obligation
35 under a defense contract with the United States government, and all sales and leases of tangible
36 personal property by any county, city, incorporated town, or village, provided such sale or lease
37 is authorized under chapter 100, and such transaction is certified for sales tax exemption by the
38 department of economic development, and tangible personal property used for railroad
39 infrastructure brought into this state for processing, fabrication, or other modification for use
40 outside the state in the regular course of business.

41 4. In addition to all other exemptions granted under this chapter, there is hereby
42 specifically exempted from the provisions of sections 144.010 to 144.525 and 144.600 to
43 144.761, and section 238.235, and the local sales tax law as defined in section 32.085, and from
44 the computation of the tax levied, assessed, or payable under sections 144.010 to 144.525 and
45 144.600 to 144.761, and section 238.235, and the local sales tax law as defined in section 32.085,
46 all sales and purchases of tangible personal property, utilities, services, or any other transaction
47 that would otherwise be subject to the state or local sales or use tax when such sales are made
48 to or purchases are made by a private partner for use in completing a project under sections
49 227.600 to 227.669.

50 5. In addition to all other exemptions granted under this chapter, there is hereby
51 specifically exempted from the provisions of sections 144.010 to 144.525 and 144.600 to
52 144.761, and section 238.235, and the local sales tax law as defined in section 32.085, and from
53 the computation of the tax levied, assessed, or payable under sections 144.010 to 144.525 and
54 144.600 to 144.761, and section 238.235, and the local sales tax law as defined in section 32.085,
55 all materials, manufactured goods, machinery and parts, electrical energy and gas, whether
56 natural, artificial or propane, water, coal and other energy sources, chemicals, soaps, detergents,
57 cleaning and sanitizing agents, and other ingredients and materials inserted by commercial or
58 industrial laundries to treat, clean, and sanitize textiles in facilities which process at least five
59 hundred pounds of textiles per hour and at least sixty thousand pounds per week.

2 ~~[144.026. The director of revenue shall not send notice to any taxpayer~~
3 ~~under subsection 2 of section 144.021 regarding the decision in IBM Corporation~~
4 ~~v. Director of Revenue, 491 S.W.3d 535 (Mo. banc 2016) prior to August 28,~~
 ~~2018.]~~

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