

SENATE BILL NO. 945

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

3579S.011

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 144.010, RSMo, and section 144.011 as enacted by senate bills nos. 153 & 97, one hundred first general assembly, first regular session, and to enact in lieu thereof two new sections relating to sales taxes on certain purchases of utilities.

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

Section A. Section 144.010, RSMo, and section 144.011 as
2 enacted by senate bills nos. 153 & 97, one hundred first general
3 assembly, first regular session, are repealed and two new
4 sections enacted in lieu thereof, to be known as sections
5 144.010 and 144.011, to read as follows:

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

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

10 (2) "Business" includes any activity engaged in by any
11 person, or caused to be engaged in by him, with the object
12 of gain, benefit or advantage, either direct or indirect,
13 and the classification of which business is of such
14 character as to be subject to the terms of sections 144.010
15 to 144.525. A person is "engaging in business" in this

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

16 state for purposes of sections 144.010 to 144.525 if such
17 person engages in business activities within this state or
18 maintains a place of business in this state under section
19 144.605. The isolated or occasional sale of tangible
20 personal property, service, substance, or thing, by a person
21 not engaged in such business, does not constitute engaging
22 in business within the meaning of sections 144.010 to
23 144.525 unless the total amount of the gross receipts from
24 such sales, exclusive of receipts from the sale of tangible
25 personal property by persons which property is sold in the
26 course of the partial or complete liquidation of a
27 household, farm or nonbusiness enterprise, exceeds three
28 thousand dollars in any calendar year. The provisions of
29 this subdivision shall not be construed to make any sale of
30 property which is exempt from sales tax or use tax on June
31 1, 1977, subject to that tax thereafter;

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

39 (4) "Gross receipts", except as provided in section
40 144.012, means the total amount of the sale price of the
41 sales at retail including any services other than charges
42 incident to the extension of credit that are a part of such
43 sales made by the businesses herein referred to, capable of
44 being valued in money, whether received in money or
45 otherwise; except that, the term gross receipts shall not
46 include the sale price of property returned by customers
47 when the full sale price thereof is refunded either in cash

48 or by credit. In determining any tax due under sections
49 144.010 to 144.525 on the gross receipts, charges incident
50 to the extension of credit shall be specifically exempted.
51 For the purposes of sections 144.010 to 144.525 the total
52 amount of the sale price above mentioned shall be deemed to
53 be the amount received. It shall also include the lease or
54 rental consideration where the right to continuous
55 possession or use of any article of tangible personal
56 property is granted under a lease or contract and such
57 transfer of possession would be taxable if outright sale
58 were made and, in such cases, the same shall be taxable as
59 if outright sale were made and considered as a sale of such
60 article, and the tax shall be computed and paid by the
61 lessee upon the rentals paid. The term gross receipts shall
62 not include usual and customary delivery charges that are
63 stated separately from the sale price;

64 (5) "Instructional class", includes any class, lesson,
65 or instruction intended or used for teaching;

66 (6) "Livestock", cattle, calves, sheep, swine, ratite
67 birds, including but not limited to, ostrich and emu,
68 aquatic products as described in section 277.024, llamas,
69 alpaca, buffalo, bison, elk documented as obtained from a
70 legal source and not from the wild, goats, horses, other
71 equine, honey bees, or rabbits raised in confinement for
72 human consumption;

73 (7) "Motor vehicle leasing company" shall be a company
74 obtaining a permit from the director of revenue to operate
75 as a motor vehicle leasing company. Not all persons renting
76 or leasing trailers or motor vehicles need to obtain such a
77 permit; however, no person failing to obtain such a permit
78 may avail itself of the optional tax provisions of
79 subsection 5 of section 144.070, as hereinafter provided;

80 (8) "Person" includes any individual, firm,
81 copartnership, joint adventure, association, corporation,
82 municipal or private, and whether organized for profit or
83 not, state, county, political subdivision, state department,
84 commission, board, bureau or agency, except the state
85 transportation department, estate, trust, business trust,
86 receiver or trustee appointed by the state or federal court,
87 syndicate, or any other group or combination acting as a
88 unit, and the plural as well as the singular number;

89 (9) "Product which is intended to be sold ultimately
90 for final use or consumption" means tangible personal
91 property, or any service that is subject to state or local
92 sales or use taxes, or any tax that is substantially
93 equivalent thereto, in this state or any other state;

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

97 (11) "Research or experimentation activities" are the
98 development of an experimental or pilot model, plant
99 process, formula, invention or similar property, and the
100 improvement of existing property of such type. Research or
101 experimentation activities do not include activities such as
102 ordinary testing or inspection of materials or products for
103 quality control, efficiency surveys, advertising promotions
104 or research in connection with literary, historical or
105 similar projects;

106 (12) "Sale" or "sales" includes installment and credit
107 sales, and the exchange of properties as well as the sale
108 thereof for money, every closed transaction constituting a
109 sale, and means any transfer, exchange or barter,
110 conditional or otherwise, in any manner or by any means
111 whatsoever, of tangible personal property for valuable

112 consideration and the rendering, furnishing or selling for a
113 valuable consideration any of the substances, things and
114 services herein designated and defined as taxable under the
115 terms of sections 144.010 to 144.525;

116 (13) "Sale at retail" means any transfer made by any
117 person engaged in business as defined herein of the
118 ownership of, or title to, tangible personal property to the
119 purchaser, for use or consumption and not for resale in any
120 form as tangible personal property, for a valuable
121 consideration; except that, for the purposes of sections
122 144.010 to 144.525 and the tax imposed thereby: (i)
123 purchases of tangible personal property made by duly
124 licensed physicians, dentists, optometrists and
125 veterinarians and used in the practice of their professions
126 shall be deemed to be purchases for use or consumption and
127 not for resale; and (ii) the selling of computer printouts,
128 computer output or microfilm or microfiche and computer-
129 assisted photo compositions to a purchaser to enable the
130 purchaser to obtain for his or her own use the desired
131 information contained in such computer printouts, computer
132 output on microfilm or microfiche and computer-assisted
133 photo compositions shall be considered as the sale of a
134 service and not as the sale of tangible personal property.
135 Where necessary to conform to the context of sections
136 144.010 to 144.525 and the tax imposed thereby, the term
137 sale at retail shall be construed to embrace:

138 (a) Sales of admission tickets, cash admissions,
139 charges and fees to or in places of amusement, entertainment
140 and recreation, games and athletic events, except amounts
141 paid for any instructional class;

142 (b) Sales of electricity, electrical current, water
143 and gas, natural or artificial, to domestic, commercial or

144 industrial consumers, **except as provided in subdivision (12)**
145 **of subsection 1 of section 144.011;**

146 (c) Sales of local and long distance
147 telecommunications service to telecommunications subscribers
148 and to others through equipment of telecommunications
149 subscribers for the transmission of messages and
150 conversations, and the sale, rental or leasing of all
151 equipment or services pertaining or incidental thereto;

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

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

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

165 (14) "Seller" means a person selling or furnishing
166 tangible personal property or rendering services, on the
167 receipts from which a tax is imposed pursuant to section
168 144.020;

169 (15) The noun "tax" means either the tax payable by
170 the purchaser of a commodity or service subject to tax, or
171 the aggregate amount of taxes due from the vendor of such
172 commodities or services during the period for which he or
173 she is required to report his or her collections, as the
174 context may require; and

175 (16) "Telecommunications service", for the purpose of
176 this chapter, the transmission of information by wire,
177 radio, optical cable, coaxial cable, electronic impulses, or
178 other similar means. As used in this definition,
179 "information" means knowledge or intelligence represented by
180 any form of writing, signs, signals, pictures, sounds, or
181 any other symbols. Telecommunications service does not
182 include the following if such services are separately stated
183 on the customer's bill or on records of the seller
184 maintained in the ordinary course of business:

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

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

190 (c) Private mobile radio services which are not two-
191 way commercial mobile radio services such as wireless
192 telephone, personal communications services or enhanced
193 specialized mobile radio services as defined pursuant to
194 federal law; or

195 (d) Cable or satellite television or music services.

196 2. For purposes of the taxes imposed under sections
197 144.010 to 144.525, and any other provisions of law
198 pertaining to sales or use taxes which incorporate the
199 provisions of sections 144.010 to 144.525 by reference, the
200 term manufactured homes shall have the same meaning given it
201 in section 700.010.

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

 144.011. 1. For purposes of this chapter, and the
2 taxes imposed thereby, the definition of "retail sale" or

3 "sale at retail" shall not be construed to include any of
4 the following:

5 (1) The transfer by one corporation of substantially
6 all of its tangible personal property to another corporation
7 pursuant to a merger or consolidation effected under the
8 laws of the state of Missouri or any other jurisdiction;

9 (2) The transfer of tangible personal property
10 incident to the liquidation or cessation of a taxpayer's
11 trade or business, conducted in proprietorship, partnership
12 or corporate form, except to the extent any transfer is made
13 in the ordinary course of the taxpayer's trade or business;

14 (3) The transfer of tangible personal property to a
15 corporation solely in exchange for its stock or securities;

16 (4) The transfer of tangible personal property to a
17 corporation by a shareholder as a contribution to the
18 capital of the transferee corporation;

19 (5) The transfer of tangible personal property to a
20 partnership solely in exchange for a partnership interest
21 therein;

22 (6) The transfer of tangible personal property by a
23 partner as a contribution to the capital of the transferee
24 partnership;

25 (7) The transfer of tangible personal property by a
26 corporation to one or more of its shareholders as a
27 dividend, return of capital, distribution in the partial or
28 complete liquidation of the corporation or distribution in
29 redemption of the shareholder's interest therein;

30 (8) The transfer of tangible personal property by a
31 partnership to one or more of its partners as a current
32 distribution, return of capital or distribution in the
33 partial or complete liquidation of the partnership or of the
34 partner's interest therein;

35 (9) The transfer of reusable containers used in
36 connection with the sale of tangible personal property
37 contained therein for which a deposit is required and
38 refunded on return;

39 (10) The purchase by persons operating eating or food
40 service establishments, of items of a nonreusable nature
41 which are furnished to the customers of such establishments
42 with or in conjunction with the retail sales of their food
43 or beverage. Such items shall include, but not be limited
44 to, wrapping or packaging materials and nonreusable paper,
45 wood, plastic and aluminum articles such as containers,
46 trays, napkins, dishes, silverware, cups, bags, boxes,
47 straws, sticks and toothpicks;

48 (11) The purchase by persons operating hotels, motels
49 or other transient accommodation establishments, of items of
50 a nonreusable nature which are furnished to the guests in
51 the guests' rooms of such establishments and such items are
52 included in the charge made for such accommodations. Such
53 items shall include, but not be limited to, soap, shampoo,
54 tissue and other toiletries and food or confectionery items
55 offered to the guests without charge;

56 **(12) The purchase by persons operating hotels, motels,**
57 **or other transient accommodation establishments of**
58 **electricity, electrical current, water, and gas, whether**
59 **natural or artificial, which are used to heat, cool, or**
60 **provide water or power to the guests' accommodations of such**
61 **establishments, including sleeping rooms, meeting and**
62 **banquet rooms, and any other customer space rented by**
63 **guests, and which are included in the charge made for such**
64 **accommodations. Any person required to remit sales tax on**
65 **such purchases prior to August 28, 2022, shall be entitled**
66 **to a refund on such taxes remitted;**

67 **(13)** The transfer of a manufactured home other than:

68 (a) A transfer which involves the delivery of the
69 document known as the "Manufacturer's Statement of Origin"
70 to a person other than a manufactured home dealer, as
71 defined in section 700.010, for purposes of allowing such
72 person to obtain a title to the manufactured home from the
73 department of revenue of this state or the appropriate
74 agency or officer of any other state;

75 (b) A transfer which involves the delivery of a
76 "Repossessed Title" to a resident of this state if the tax
77 imposed by this chapter was not paid on the transfer of the
78 manufactured home described in paragraph (a) of this
79 subdivision;

80 (c) The first transfer which occurs after December 31,
81 1985, if the tax imposed by this chapter was not paid on any
82 transfer of the same manufactured home which occurred before
83 December 31, 1985; or

84 **[(13)] (14)** Charges for initiation fees or dues to:

85 (a) Fraternal beneficiaries societies, or domestic
86 fraternal societies, orders or associations operating under
87 the lodge system a substantial part of the activities of
88 which are devoted to religious, charitable, scientific,
89 literary, educational or fraternal purposes;

90 (b) Posts or organizations of past or present members
91 of the Armed Forces of the United States or an auxiliary
92 unit or society of, or a trust or foundation for, any such
93 post or organization substantially all of the members of
94 which are past or present members of the Armed Forces of the
95 United States or who are cadets, spouses, widows, or
96 widowers of past or present members of the Armed Forces of
97 the United States, no part of the net earnings of which

98 inures to the benefit of any private shareholder or
99 individual; or

100 (c) Nonprofit organizations exempt from taxation under
101 Section 501(c)(7) of the Internal Revenue Code of 1986, as
102 amended.

103 2. The assumption of liabilities of the transferor by
104 the transferee incident to any of the transactions
105 enumerated in the above subdivisions (1) to (8) of
106 subsection 1 of this section shall not disqualify the
107 transfer from the exclusion described in this section, where
108 such liability assumption is related to the property
109 transferred and where the assumption does not have as its
110 principal purpose the avoidance of Missouri sales or use tax.

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