

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 184

AN ACT

To repeal section 144.030, RSMo, and to enact in lieu thereof four new sections relating to tax relief for child-related expenses.

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

Section A. Section 144.030, RSMo, is repealed and four new sections enacted in lieu thereof, to be known as sections 135.1310, 135.1325, 135.1350, and 144.030, to read as follows:

135.1310. 1. This section shall be known and may be cited as the "Child Care Contribution Tax Credit Act".

2. For purposes of this section, the following terms shall mean:

(1) "Child care", the same as defined in section 210.201;

(2) "Child care desert", a census tract that has a poverty rate of at least twenty percent or a median family income of less than eighty percent of the statewide average and where at least five hundred people or thirty-three percent of the population are located at least one-half mile away from a child care provider in urbanized areas or at least ten miles away in rural areas;

(3) "Child care provider", a child care provider as defined in section 210.201 that is licensed pursuant to section 210.221, or that is unlicensed and that is registered with the department of elementary and secondary education;

(4) "Contribution", an eligible donation of cash, stock, bonds or other marketable securities, or real property;

(5) "Department", the Missouri department of economic development;

(6) "Person related to the taxpayer", an individual connected with the taxpayer by blood, adoption, or marriage, or an individual, corporation, partnership, limited liability company, trust, or association controlled by, or under the control of, the taxpayer directly, or through an individual, corporation, limited liability company, partnership, trust, or association under the control of the taxpayer;

(7) "Rural area", a town or community within the state that is not within a metropolitan statistical area and has a population of six thousand or fewer inhabitants as determined by the last preceding federal decennial census or any unincorporated area not within a metropolitan statistical area;

(8) "State tax liability", in the case of a business taxpayer, any liability incurred by such taxpayer pursuant to chapter 143 and chapter 148, exclusive of the provisions relating to the withholding of tax as provided for in sections 143.191 to 143.265 and related provisions, and in the case of an individual taxpayer, any liability incurred by such taxpayer pursuant to chapter 143;

(9) "Tax credit", a credit against the taxpayer's state tax liability;

(10) "Taxpayer", a corporation as defined in section 143.441 or 143.471, any charitable organization that is exempt from federal income tax and whose Missouri unrelated business taxable income, if any, would be subject to the state income tax imposed under chapter 143, or individuals or partnerships subject to the state income tax imposed by the provisions of chapter 143.

3. For all tax years beginning on or after January 1, 2023, a taxpayer may claim the tax credit authorized in this section against the taxpayer's state tax liability for the tax year in which a verified contribution was made in an amount equal to up to seventy-five percent of the verified contribution to a child care provider. The minimum amount of any tax credit issued shall not be less than one hundred dollars, and shall not exceed two hundred thousand dollars per tax year.

(1) The child care provider receiving a contribution shall, within sixty days of the date it received the contribution, issue the taxpayer a contribution verification and file a copy of the contribution verification with the department. The contribution verification shall be in the form established by the department and shall include the taxpayer's name, taxpayer's state or federal tax identification number or last four digits of the taxpayer's Social Security number, amount of tax credit, amount of contribution, legal name and address of the child care provider receiving the tax credit, the child care provider's federal employer identification number, the child care provider's departmental vendor number or license number, and the date the child care provider received the contribution from the taxpayer. The contribution verification shall include a signed attestation stating the child care provider will use the contribution solely to promote child care.

(2) The failure of the child care provider to timely issue the contribution verification to the taxpayer or file it with the department shall entitle the taxpayer to a refund of the contribution from the child care provider.

4. A donation is eligible when:

(1) The donation is used directly by a child care provider to promote child care for children twelve years of

age or younger, including by acquiring or improving child care facilities, equipment, or services, or improving staff salaries, staff training, or the quality of child care;

(2) The donation is made to a child care provider in which the taxpayer or a person related to the taxpayer does not have a direct financial interest; and

(3) The donation is not made in exchange for care of a child or children in the case of an individual taxpayer that is not an employer making a contribution on behalf of its employees.

5. A child care provider that uses the contribution for an ineligible purpose shall repay to the department the value of the tax credit for the contribution amount used for an ineligible purpose.

6. The tax credits authorized by this section shall not be refundable and shall not be transferred, sold, or otherwise conveyed. Any amount of approved tax credits that a taxpayer is prohibited by this subsection from using for the tax year in which the credit is first claimed may be carried back to the taxpayer's immediately prior tax year and carried forward to the taxpayer's subsequent tax year for up to five succeeding tax years.

7. Notwithstanding any provision of subsection 6 of this section to the contrary, a taxpayer that is exempt, under 26 U.S.C. Section 501(c)(3), and any amendments thereto, from all or part of the federal income tax shall be eligible for a refund of its tax credit issued under this section, without regard to whether it has incurred any state tax liability. Such exempt taxpayer may claim a refund of the tax credit on its tax return required to be filed under the provisions of chapter 143, exclusive of the return for the withholding of tax under sections 143.191 to 143.265. If such exempt taxpayer is not required to file a tax return

under the provisions of chapter 143, the exempt taxpayer may claim a refund of the tax credit on a refund claim form prescribed by the department of revenue. The department of revenue shall prescribe such forms, instructions, and rules as it deems appropriate to carry out the provisions of this subsection.

8. (1) The cumulative amount of tax credits authorized pursuant to this section shall not exceed twenty million dollars for each calendar year. The department shall approve tax credit applications on a first-come, first-served basis until the cumulative tax credit authorization limit is reached for the calendar year. A taxpayer shall apply to the department for the child care contribution tax credit by submitting a copy of the contribution verification provided by a child care provider to such taxpayer. Upon receipt of the contribution verification, the department shall issue a tax credit certificate to the applicant.

(2) If the maximum amount of tax credits allowed in any calendar year as provided pursuant to subdivision (1) of this subsection is authorized, the maximum amount of tax credits allowed pursuant to subdivision (1) of this subsection shall be increased by fifteen percent, provided that all such increases in the allowable amount of tax credits shall be reserved for contributions made to child care providers located in a child care desert. The director of the department shall publish such adjusted amount.

9. The tax credits allowed under this section shall be considered a domestic and social tax credit under subdivision (5) of subsection 2 of section 135.800.

10. All action and communication undertaken or required under this section shall be exempt from section 105.1500.

11. The department may promulgate rules to implement and administer the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created pursuant to the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2023, shall be invalid and void.

12. Pursuant to section 23.253 of the Missouri sunset act:

(1) The program authorized under this section shall expire on December 31, 2029, unless reauthorized by the general assembly; and

(2) The act shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset; and

(3) If such program is reauthorized, the program authorized under this act shall automatically sunset six years after the effective date of the reauthorization of this section; and

(4) The provisions of this subsection shall not be construed to limit or in any way impair the department of revenue's ability to redeem tax credits authorized on or before the date the program authorized pursuant to this section expires, or a taxpayer's ability to redeem such tax credits.

135.1325. 1. This section shall be known and may be cited as the "Employer Provided Child Care Assistance Tax Credit Act".

2. For purposes of this section, the following terms shall mean:

(1) "Child care desert", a census tract that has a poverty rate of at least twenty percent or a median family income of less than eighty percent of the statewide average and where at least five hundred people or thirty-three percent of the population are located at least one-half mile away from a child care provider in urbanized areas or at least ten miles away in rural areas;

(2) "Child care facility", a child care facility as defined in section 210.201 that is licensed pursuant to section 210.221, or that is unlicensed and that is registered with the department of elementary and secondary education;

(3) "Department", the Missouri department of economic development;

(4) "Employer matching contribution", a contribution made by the taxpayer to a cafeteria plan, as that term is used in 26 U.S.C. Section 125, of an employee of the taxpayer, which matches a dollar amount or percentage of the employee's contribution to the cafeteria plan. "Employer matching contribution" shall not include the amount of any salary reduction or other compensation foregone by the employee in connection with the cafeteria plan;

(5) "Qualified child care expenditure", an amount paid of reasonable costs incurred that meet any of the following:

(a) To acquire, construct, rehabilitate, or expand property that will be, or is, used as part of a child care facility that is either operated by the taxpayer or contracted with by the taxpayer and which does not

constitute part of the principal residence of the taxpayer or any employee of the taxpayer;

(b) For the operating costs of a child care facility of the taxpayer, including costs relating to the training of employees, scholarship programs, and for compensation to employees;

(c) Under a contract with a child care facility to provide child care services to employees of the taxpayer; or

(d) As an employer matching contribution, but only to the extent such employer matching contribution is restricted by the taxpayer solely for the taxpayer's employee to obtain child care services at a child care facility and is used for that purpose during the tax year;

(6) "Rural area", a town or community within the state that is not within a metropolitan statistical area and has a population of six thousand or fewer inhabitants as determined by the last preceding federal decennial census or any unincorporated area not within a metropolitan statistical area;

(7) "State tax liability", in the case of a business taxpayer, any liability incurred by such taxpayer pursuant to the provisions of chapter 143 and chapter 148, exclusive of the provisions relating to the withholding of tax as provided for in sections 143.191 to 143.265 and related provisions, and in the case of an individual taxpayer, any liability incurred by such taxpayer pursuant to the provisions of chapter 143;

(8) "Tax credit", a credit against the taxpayer's state tax liability;

(9) "Taxpayer", a corporation as defined in section 143.441 or 143.471, any charitable organization that is exempt from federal income tax and whose Missouri unrelated business taxable income, if any, would be subject to the

state income tax imposed under chapter 143, or individuals or partnerships subject to the state income tax imposed by the provisions of chapter 143.

3. For all tax years beginning on or after January 1, 2023, a taxpayer may claim a tax credit authorized in this section in an amount equal to thirty percent of the qualified child care expenditures paid or incurred with respect to a child care facility. The maximum amount of any tax credit issued under this section shall not exceed two hundred thousand dollars per taxpayer per tax year.

4. A facility shall not be treated as a child care facility with respect to a taxpayer unless the following conditions have been met:

(1) Enrollment in the facility is open to employees of the taxpayer during the tax year; and

(2) If the facility is the principal business of the taxpayer, at least thirty percent of the enrollees of such facility are dependents of employees of the taxpayer.

5. The tax credits authorized by this section shall not be refundable or transferable. The tax credits shall not be sold, assigned, or otherwise conveyed. Any amount of approved tax credits that a taxpayer is prohibited by this subsection from using for the tax year in which the credit is first claimed may be carried back to the taxpayer's immediately prior tax year and carried forward to the taxpayer's subsequent tax year for up to five succeeding tax years.

6. Notwithstanding any provision of subsection 5 of this section to the contrary, a taxpayer that is exempt, under 26 U.S.C. Section 501(c)(3), and any amendments thereto, from all or part of the federal income tax shall be eligible for a refund of its tax credit issued under this section, without regard to whether it has incurred any state

tax liability. Such exempt taxpayer may claim a refund of the tax credit on its tax return required to be filed under the provisions of chapter 143, exclusive of the return for the withholding of tax under sections 143.191 to 143.265. If such exempt taxpayer is not required to file a tax return under the provisions of chapter 143, the exempt taxpayer may claim a refund of the tax credit on a refund claim form prescribed by the department of revenue. The department of revenue shall prescribe such forms, instructions, and rules as it deems appropriate to carry out the provisions of this subsection.

7. (1) The cumulative amount of tax credits authorized pursuant to this section shall not exceed twenty million dollars for each calendar year. The department shall approve tax credit applications on a first-come, first-served basis until the cumulative tax credit authorization limit is reached for the calendar year.

(2) If the maximum amount of tax credits allowed in any calendar year as provided pursuant to subdivision (1) of this subsection is authorized, the maximum amount of tax credits allowed pursuant to subdivision (1) of this subsection shall be increased by fifteen percent, provided that all such increases in the allowable amount of tax credits shall be reserved for qualified child care expenditures for child care facilities located in a child care desert. The director of the department shall publish such adjusted amount.

8. A taxpayer who has claimed a tax credit under this section shall notify the department within sixty days of any cessation of operation, change in ownership, or agreement to assume recapture liability as such terms are defined by 26 U.S.C. Section 45F, in the form and manner prescribed by department rule or instruction. If there is a cessation of

operation or change in ownership relating to a child care facility, the taxpayer shall repay the department the applicable recapture percentage of the credit allowed under this section, but this recapture amount shall be limited to the tax credit allowed under this section. The recapture amount shall be considered a tax liability arising on the tax payment due date for the tax year in which the cessation of operation, change in ownership, or agreement to assume recapture liability occurred and shall be assessed and collected under the same provisions that apply to a tax liability under chapter 143 or chapter 148.

9. The tax credit allowed pursuant to this section shall be considered a domestic and social tax credit under subdivision (5) of subsection 2 of section 135.800.

10. All action and communication undertaken or required under this section shall be exempt from section 105.1500.

11. The department may promulgate rules to implement and administer the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created pursuant to the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2023, shall be invalid and void.

12. Pursuant to section 23.253 of the Missouri sunset act:

(1) The program authorized under this act shall expire on December 31, 2029, unless reauthorized by the general assembly; and

(2) The act shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under the act is sunset; and

(3) If such program is reauthorized, the program authorized under this act shall automatically sunset six years after the effective date of the reauthorization of the act; and

(4) The provisions of this subsection shall not be construed to limit or in any way impair the department of revenue's ability to redeem tax credits authorized on or before the date the program authorized pursuant to this section expires, or a taxpayer's ability to redeem such tax credits.

135.1350. 1. This section shall be known and may be cited as the "Child Care Providers Tax Credit Act".

2. For purposes of this section, the following terms shall mean:

(1) "Capital expenditures", expenses incurred by a child care provider, during the tax year for which a tax credit is claimed pursuant to this section, for the construction, renovation, or rehabilitation of a child care facility to the extent necessary to operate a child care facility and comply with applicable child care facility regulations promulgated by the department of elementary and secondary education;

(2) "Child care desert", a census tract that has a poverty rate of at least twenty percent or a median family income of less than eighty percent of the statewide average and where at least five hundred people or thirty-three percent of the population are located at least one-half mile

away from a child care provider in urbanized areas or at least ten miles away in rural areas;

(3) "Child care facility", the same as defined in section 210.201;

(4) "Child care provider", a child care provider as defined in section 210.201 that is licensed pursuant to section 210.221, or that is unlicensed and that is registered with the department of elementary and secondary education;

(5) "Department", the department of elementary and secondary education;

(6) "Employee", an employee, as that term is used in subsection 2 of section 143.191, of a child care provider who worked for the child care provider for an average of at least ten hours per week for at least a three-month period during the tax year for which a tax credit is claimed pursuant to this section and who is not an immediate family member of the child care provider;

(7) "Eligible employer withholding tax", the total amount of tax that the child care provider was required, under section 143.191, to deduct and withhold from the wages it paid to employees during the tax year for which the child care provider is claiming a tax credit pursuant to this section, to the extent actually paid;

(8) "Rural area", a town or community within the state that is not within a metropolitan statistical area and has a population of six thousand or fewer inhabitants as determined by the last preceding federal decennial census or any unincorporated area not within a metropolitan statistical area;

(9) "State tax liability", any liability incurred by the taxpayer pursuant to the provisions of chapter 143, exclusive of the provisions relating to the withholding of

tax as provided for in sections 143.191 to 143.265 and related provisions;

(10) "Tax credit", a credit against the taxpayer's state tax liability;

(11) "Taxpayer", a corporation as defined in section 143.441 or 143.471, any charitable organization that is exempt from federal income tax and whose Missouri unrelated business taxable income, if any, would be subject to the state income tax imposed under chapter 143, or an individual or partnership subject to the state income tax imposed by the provisions of chapter 143.

3. For all tax years beginning on or after January 1, 2024, a child care provider with three or more employees may claim a tax credit authorized in this section in an amount equal to the child care provider's eligible employer withholding tax, and may also claim a tax credit in an amount up to thirty percent of the child care provider's capital expenditures. No tax credit for capital expenditures shall be allowed if the capital expenditures are less than one thousand dollars. The amount of any tax credit issued under this section shall not exceed two hundred thousand dollars per child care provider per tax year.

4. To claim a tax credit authorized pursuant to this section, a child care provider shall submit to the department, for preliminary approval, an application for the tax credit on a form provided by the department and at such times as the department may require. If the child care provider is applying for a tax credit for capital expenditures, the child care provider shall present proof acceptable to the department that the child care provider's capital expenditures satisfy the requirements of subdivision (1) of subsection 2 of this section. Upon final approval of

an application, the department shall issue the child care provider a certificate of tax credit.

5. The tax credits authorized by this section shall not be refundable and shall not be transferred, sold, assigned, or otherwise conveyed. Any amount of credit that exceeds the child care provider's state tax liability for the tax year for which the tax credit is issued may be carried back to the child care provider's immediately prior tax year or carried forward to the child care provider's subsequent tax year for up to five succeeding tax years.

6. Notwithstanding any provision of subsection 5 of this section to the contrary, a child care provider that is exempt, under 26 U.S.C. Section 501(c)(3), and any amendments thereto, from all or part of the federal income tax shall be eligible for a refund of its tax credit issued under this section, without regard to whether it has incurred any state tax liability. Such exempt child care provider may claim a refund of the tax credit on its tax return required to be filed under the provisions of chapter 143, exclusive of the return for the withholding of tax under sections 143.191 to 143.265. If such exempt child care provider is not required to file a tax return under the provisions of chapter 143, the exempt child care provider may claim a refund of the tax credit on a refund claim form prescribed by the department of revenue. The department of revenue shall prescribe such forms, instructions, and rules as it deems appropriate to carry out the provisions of this subsection.

7. (1) The cumulative amount of tax credits authorized pursuant to this section shall not exceed twenty million dollars for each calendar year. The department shall approve tax credit applications on a first-come, first-

served basis until the cumulative tax credit authorization limit is reached for the calendar year.

(2) If the maximum amount of tax credits allowed in any calendar year as provided pursuant to subdivision (1) of this subsection is authorized, the maximum amount of tax credits allowed pursuant to subdivision (1) of this subsection shall be increased by fifteen percent, provided that all such increases in the allowable amount of tax credits shall be reserved for child care providers located in a child care desert. The director of the department shall publish such adjusted amount.

8. The tax credit authorized by this section shall be considered a domestic and social tax credit under subdivision (5) of subsection 2 of section 135.800.

9. All action and communication undertaken or required with respect to this section shall be exempt from section 105.1500. Notwithstanding section 32.057 or any other tax confidentiality law to the contrary, the department of revenue may disclose tax information to the department for the purpose of the verification of a child care provider's eligible employer withholding tax under this section.

10. The department may promulgate rules and adopt statements of policy, procedures, forms and guidelines to implement and administer the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created pursuant to the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional,

then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2023, shall be invalid and void.

11. Pursuant to section 23.253 of the Missouri sunset act:

(1) The program authorized under this section shall expire on December 31, 2029, unless reauthorized by the general assembly; and

(2) The act shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset; and

(3) If such program is reauthorized, the program authorized under this section shall automatically sunset six years after the effective date of the reauthorization of this section; and

(4) The provisions of this subsection shall not be construed to limit or in any way impair the department of revenue's ability to redeem tax credits authorized on or before the date the program authorized pursuant to this section expires, or a taxpayer's ability to redeem such tax credits.

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

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

(1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such excise tax is refunded pursuant to section 142.824; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing water to be sold ultimately at retail; or feed for livestock or poultry; or grain to be converted into foodstuffs which are to be sold ultimately in processed form at retail; or seed, limestone or fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested will be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at retail; economic poisons registered pursuant to the provisions of the Missouri pesticide registration [law] act, sections [281.220] 281.210 to 281.310, which are to be used in connection with the growth or production of crops, fruit trees or orchards applied before, during, or after planting, the crop of which when harvested will be sold at retail or will be converted into foodstuffs which are to be sold ultimately in processed form at retail;

(2) Materials, manufactured goods, machinery and parts which when used in manufacturing, processing, compounding, mining, producing or fabricating become a component part or ingredient of the new personal property resulting from such manufacturing, processing, compounding, mining, producing or fabricating and which new personal property is intended to

be sold ultimately for final use or consumption; and materials, including without limitation, gases and manufactured goods, including without limitation slagging materials and firebrick, which are ultimately consumed in the manufacturing process by blending, reacting or interacting with or by becoming, in whole or in part, component parts or ingredients of steel products intended to be sold ultimately for final use or consumption;

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

(4) Replacement machinery, equipment, and parts and the materials and supplies solely required for the installation or construction of such replacement machinery, equipment, and parts, used directly in manufacturing, mining, fabricating or producing a product which is intended to be sold ultimately for final use or consumption; and machinery and equipment, and the materials and supplies required solely for the operation, installation or construction of such machinery and equipment, purchased and used to establish new, or to replace or expand existing, material recovery processing plants in this state. For the purposes of this subdivision, a "material recovery processing plant" means a facility that has as its primary purpose the recovery of materials into a usable product or a different form which is used in producing a new product and shall include a facility or equipment which are used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but shall not include motor vehicles used on highways. For purposes of this section, the terms motor vehicle and highway shall

have the same meaning pursuant to section 301.010. For the purposes of this subdivision, subdivision (5) of this subsection, and section 144.054, as well as the definition in subdivision (9) of subsection 1 of section 144.010, the term "product" includes telecommunications services and the term "manufacturing" shall include the production, or production and transmission, of telecommunications services. The preceding sentence does not make a substantive change in the law and is intended to clarify that the term "manufacturing" has included and continues to include the production and transmission of "telecommunications services", as enacted in this subdivision and subdivision (5) of this subsection, as well as the definition in subdivision (9) of subsection 1 of section 144.010. The preceding two sentences reaffirm legislative intent consistent with the interpretation of this subdivision and subdivision (5) of this subsection in *Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d 763 (Mo. banc 2002) and *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo. banc 2005), and accordingly abrogates the Missouri supreme court's interpretation of those exemptions in *IBM Corporation v. Director of Revenue*, 491 S.W.3d 535 (Mo. banc 2016) to the extent inconsistent with this section and *Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d 763 (Mo. banc 2002) and *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo. banc 2005). The construction and application of this subdivision as expressed by the Missouri supreme court in *DST Systems, Inc. v. Director of Revenue*, 43 S.W.3d 799 (Mo. banc 2001); *Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d 763 (Mo. banc 2002); and *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo. banc 2005), is hereby affirmed. Material

recovery is not the reuse of materials within a manufacturing process or the use of a product previously recovered. The material recovery processing plant shall qualify under the provisions of this section regardless of ownership of the material being recovered;

(5) Machinery and equipment, and parts and the materials and supplies solely required for the installation or construction of such machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating plants in the state if such machinery and equipment is used directly in manufacturing, mining or fabricating a product which is intended to be sold ultimately for final use or consumption. The construction and application of this subdivision as expressed by the Missouri supreme court in *DST Systems, Inc. v. Director of Revenue*, 43 S.W.3d 799 (Mo. banc 2001); *Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d 763 (Mo. banc 2002); and *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo. banc 2005), is hereby affirmed;

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

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

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

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

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

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

(12) Electrical energy used in the actual primary manufacture, processing, compounding, mining or producing of a product, or electrical energy used in the actual secondary processing or fabricating of the product, or a material recovery processing plant as defined in subdivision (4) of this subsection, in facilities owned or leased by the taxpayer, if the total cost of electrical energy so used exceeds ten percent of the total cost of production, either primary or secondary, exclusive of the cost of electrical energy so used or if the raw materials used in such processing contain at least twenty-five percent recovered materials as defined in section 260.200. There shall be a rebuttable presumption that the raw materials used in the primary manufacture of automobiles contain at least twenty-five percent recovered materials. For purposes of this subdivision, "processing" means any mode of treatment, act or series of acts performed upon materials to transform and reduce them to a different state or thing, including treatment necessary to maintain or preserve such processing by the producer at the production facility;

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

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

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

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

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

(18) All sales of insulin, and all sales, rentals, repairs, and parts of durable medical equipment, prosthetic

devices, and orthopedic devices as defined on January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including the items specified in Section 1862(a)(12) of that act (42 U.S.C. Section 1395y, as amended), and also specifically including hearing aids and hearing aid supplies and all sales of drugs which may be legally dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to administer those items, including samples and materials used to manufacture samples which may be dispensed by a practitioner authorized to dispense such samples and all sales or rental of medical oxygen, home respiratory equipment and accessories including parts, and hospital beds and accessories and ambulatory aids including parts, and all sales or rental of manual and powered wheelchairs including parts, and stairway lifts, Braille writers, electronic Braille equipment and, if purchased or rented by or on behalf of a person with one or more physical or mental disabilities to enable them to function more independently, all sales or rental of scooters including parts, and reading machines, electronic print enlargers and magnifiers, electronic alternative and augmentative communication devices, and items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities or sales of over-the-counter or nonprescription drugs to individuals with disabilities, and drugs required by the Food and Drug Administration to meet the over-the-counter drug product labeling requirements in 21 CFR 201.66, or its successor, as prescribed by a health care practitioner licensed to prescribe;

(19) All sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities and all

sales made by or to all elementary and secondary schools operated at public expense in their educational functions and activities;

(20) All sales of aircraft to common carriers for storage or for use in interstate commerce and all sales made by or to not-for-profit civic, social, service or fraternal organizations, including fraternal organizations which have been declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, in their civic or charitable functions and activities and all sales made to eleemosynary and penal institutions and industries of the state, and all sales made to any private not-for-profit institution of higher education not otherwise excluded pursuant to subdivision (19) of this subsection or any institution of higher education supported by public funds, and all sales made to a state relief agency in the exercise of relief functions and activities;

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

(22) All sales made to any private not-for-profit elementary or secondary school, all sales of feed additives, medications or vaccines administered to livestock or poultry in the production of food or fiber, all sales of pesticides

used in the production of crops, livestock or poultry for food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber, all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as defined in section 142.028, natural gas, propane, and electricity used by an eligible new generation cooperative or an eligible new generation processing entity as defined in section 348.432, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and trailers, and any freight charges on any exempt item. As used in this subdivision, the term "feed additives" means tangible personal property which, when mixed with feed for livestock or poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark the application of pesticides and herbicides for the production of crops, livestock or poultry. As used in this subdivision, the term "farm machinery and equipment" shall mean:

(a) New or used farm tractors and such other new or used farm machinery and equipment, including utility vehicles used for any agricultural use, and repair or replacement parts thereon and any accessories for and upgrades to such farm machinery and equipment and rotary mowers used for any agricultural purposes. For the purposes of this subdivision, "utility vehicle" shall mean any motorized vehicle manufactured and used exclusively for off-highway use which is more than fifty inches but no more than eighty inches in width, measured from outside of tire rim to

outside of tire rim, with an unladen dry weight of three thousand five hundred pounds or less, traveling on four or six wheels;

(b) Supplies and lubricants used exclusively, solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale at retail, including field drain tile; and

(c) One-half of each purchaser's purchase of diesel fuel therefor which is:

a. Used exclusively for agricultural purposes;

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

c. Used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail;

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

(a) "Domestic use" means that portion of metered water service, electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil, and in any city not within a county, metered or unmetered water service, which an individual occupant of a residential premises uses for nonbusiness, noncommercial or nonindustrial purposes. Utility service through a single or master meter for residential apartments or condominiums, including service for common areas and facilities and vacant units, shall be deemed to be for domestic use. Each seller

shall establish and maintain a system whereby individual purchases are determined as exempt or nonexempt;

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

(c) Each person making domestic use purchases of services or property and who uses any portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day of the fourth month following the year of purchase, and without assessment, notice or demand, file a return and pay sales tax on that portion of nondomestic purchases. Each person making nondomestic purchases of services or property and who uses any portion of the services or property so purchased for domestic use, and each person making domestic purchases on behalf of occupants of residential apartments or condominiums through a single or master meter, including service for common areas and facilities and vacant units, under a nonresidential utility service rate classification may, between the first day of the first month and the fifteenth day of the fourth

month following the year of purchase, apply for credit or refund to the director of revenue and the director shall give credit or make refund for taxes paid on the domestic use portion of the purchase. The person making such purchases on behalf of occupants of residential apartments or condominiums shall have standing to apply to the director of revenue for such credit or refund;

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

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

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

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

(28) Computers, computer software and computer security systems purchased for use by architectural or engineering firms headquartered in this state. For the

purposes of this subdivision, "headquartered in this state" means the office for the administrative management of at least four integrated facilities operated by the taxpayer is located in the state of Missouri;

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

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

(31) Electrical energy or gas, whether natural, artificial or propane, water, or other utilities which are ultimately consumed in connection with the manufacturing of cellular glass products or in any material recovery processing plant as defined in subdivision (4) of this subsection;

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

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

(34) All sales of grain bins for storage of grain for resale;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(45) All internet access or the use of internet access regardless of whether the tax is imposed on a provider of

internet access or a buyer of internet access. For purposes of this subdivision, the following terms shall mean:

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

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

(c) "Internet access", a service that enables users to connect to the internet to access content, information, or other services without regard to whether the service is referred to as telecommunications, communications, transmission, or similar services, and without regard to whether a provider of the service is subject to regulation by the Federal Communications Commission as a common carrier under 47 U.S.C. Section 201, et seq. For purposes of this subdivision, internet access also includes: the purchase, use, or sale of communications services, including telecommunications services as defined in section 144.010, to the extent the communications services are purchased, used, or sold to provide the service described in this subdivision or to otherwise enable users to access content, information, or other services offered over the internet; services that are incidental to the provision of a service described in this subdivision, when furnished to users as

part of such service, including a home page, electronic mail, and instant messaging, including voice-capable and video-capable electronic mail and instant messaging, video clips, and personal electronic storage capacity; a home page electronic mail and instant messaging, including voice-capable and video-capable electronic mail and instant messaging, video clips, and personal electronic storage capacity that are provided independently or that are not packed with internet access. As used in this subdivision, internet access does not include voice, audio, and video programming or other products and services, except services described in this paragraph or this subdivision, that use internet protocol or any successor protocol and for which there is a charge, regardless of whether the charge is separately stated or aggregated with the charge for services described in this paragraph or this subdivision;

(d) "Tax", any charge imposed by the state or a political subdivision of the state for the purpose of generating revenues for governmental purposes and that is not a fee imposed for a specific privilege, service, or benefit conferred, except as described as otherwise under this subdivision, or any obligation imposed on a seller to collect and to remit to the state or a political subdivision of the state any gross retail tax, sales tax, or use tax imposed on a buyer by such a governmental entity. The term tax shall not include any franchise fee or similar fee imposed or authorized under sections 67.1830 to 67.1846 or section 67.2689; Section 622 or 653 of the Communications Act of 1934, 47 U.S.C. Section 542 and 47 U.S.C. Section 573; or any other fee related to obligations of telecommunications carriers under the Communications Act of 1934, 47 U.S.C. Section 151, et seq., except to the extent that:

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

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

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

(46) All purchases by a company of solar photovoltaic energy systems, components used to construct a solar photovoltaic energy system, and all purchases of materials and supplies used directly to construct or make improvements to such systems, provided that such systems:

(a) Are sold or leased to an end user; or

(b) Are used to produce, collect and transmit electricity for resale or retail;

(47) All sales of diapers. For the purposes of this subdivision, "diapers" means absorbent garments worn by infants or toddlers who are not toilet-trained.

3. Any ruling, agreement, or contract, whether written or oral, express or implied, between a person and this state's executive branch, or any other state agency or department, stating, agreeing, or ruling that such person is not required to collect sales and use tax in this state despite the presence of a warehouse, distribution center, or fulfillment center in this state that is owned or operated by the person or an affiliated person shall be null and void unless it is specifically approved by a majority vote of

each of the houses of the general assembly. For purposes of this subsection, an "affiliated person" means any person that is a member of the same controlled group of corporations as defined in Section 1563(a) of the Internal Revenue Code of 1986, as amended, as the vendor or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the vendor as a corporation that is a member of the same controlled group of corporations as defined in Section 1563(a) of the Internal Revenue Code, as amended.