

FIRST REGULAR SESSION

SENATE BILL NO. 288

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDGEWAY.

Read 1st time February 16, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1587S.011

AN ACT

To repeal section 144.030, RSMo, and to enact in lieu thereof one new section relating to the state and local sales and use tax exemption for fees paid to places of amusement.

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

Section A. Section 144.030, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 144.030, to read as follows:

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

10 2. There are also specifically exempted from the provisions of the local
11 sales tax law as defined in section 32.085, section 238.235, and sections 144.010
12 to 144.525 and 144.600 to 144.761 and from the computation of the tax levied,
13 assessed or payable pursuant to the local sales tax law as defined in section
14 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to 144.745:

15 (1) Motor fuel or special fuel subject to an excise tax of this state, unless
16 all or part of such excise tax is refunded pursuant to section 142.824; or upon the
17 sale at retail of fuel to be consumed in manufacturing or creating gas, power,
18 steam, electrical current or in furnishing water to be sold ultimately at retail; or

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

19 feed for livestock or poultry; or grain to be converted into foodstuffs which are to
20 be sold ultimately in processed form at retail; or seed, limestone or fertilizer
21 which is to be used for seeding, liming or fertilizing crops which when harvested
22 will be sold at retail or will be fed to livestock or poultry to be sold ultimately in
23 processed form at retail; economic poisons registered pursuant to the provisions
24 of the Missouri pesticide registration law (sections 281.220 to 281.310) which are
25 to be used in connection with the growth or production of crops, fruit trees or
26 orchards applied before, during, or after planting, the crop of which when
27 harvested will be sold at retail or will be converted into foodstuffs which are to
28 be sold ultimately in processed form at retail;

29 (2) Materials, manufactured goods, machinery and parts which when used
30 in manufacturing, processing, compounding, mining, producing or fabricating
31 become a component part or ingredient of the new personal property resulting
32 from such manufacturing, processing, compounding, mining, producing or
33 fabricating and which new personal property is intended to be sold ultimately for
34 final use or consumption; and materials, including without limitation, gases and
35 manufactured goods, including without limitation slagging materials and
36 firebrick, which are ultimately consumed in the manufacturing process by
37 blending, reacting or interacting with or by becoming, in whole or in part,
38 component parts or ingredients of steel products intended to be sold ultimately
39 for final use or consumption;

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

44 (4) Replacement machinery, equipment, and parts and the materials and
45 supplies solely required for the installation or construction of such replacement
46 machinery, equipment, and parts, used directly in manufacturing, mining,
47 fabricating or producing a product which is intended to be sold ultimately for
48 final use or consumption; and machinery and equipment, and the materials and
49 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
51 expand existing, material recovery processing plants in this state. For the
52 purposes of this subdivision, a "material recovery processing plant" means a
53 facility that has as its primary purpose the recovery of materials into a useable
54 product or a different form which is used in producing a new product and shall

55 include a facility or equipment which are used exclusively for the collection of
56 recovered materials for delivery to a material recovery processing plant but shall
57 not include motor vehicles used on highways. For purposes of this section, the
58 terms motor vehicle and highway shall have the same meaning pursuant to
59 section 301.010. Material recovery is not the reuse of materials within a
60 manufacturing process or the use of a product previously recovered. The material
61 recovery processing plant shall qualify under the provisions of this section
62 regardless of ownership of the material being recovered;

63 (5) Machinery and equipment, and parts and the materials and supplies
64 solely required for the installation or construction of such machinery and
65 equipment, purchased and used to establish new or to expand existing
66 manufacturing, mining or fabricating plants in the state if such machinery and
67 equipment is used directly in manufacturing, mining or fabricating a product
68 which is intended to be sold ultimately for final use or consumption;

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

72 (7) Animals or poultry used for breeding or feeding purposes;

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

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

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

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

85 (12) Electrical energy used in the actual primary manufacture, processing,
86 compounding, mining or producing of a product, or electrical energy used in the
87 actual secondary processing or fabricating of the product, or a material recovery
88 processing plant as defined in subdivision (4) of this subsection, in facilities
89 owned or leased by the taxpayer, if the total cost of electrical energy so used
90 exceeds ten percent of the total cost of production, either primary or secondary,

91 exclusive of the cost of electrical energy so used or if the raw materials used in
92 such processing contain at least twenty-five percent recovered materials as
93 defined in section 260.200. There shall be a rebuttable presumption that the raw
94 materials used in the primary manufacture of automobiles contain at least
95 twenty-five percent recovered materials. For purposes of this subdivision,
96 "processing" means any mode of treatment, act or series of acts performed upon
97 materials to transform and reduce them to a different state or thing, including
98 treatment necessary to maintain or preserve such processing by the producer at
99 the production facility;

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

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

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

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

113 (17) All amounts paid or charged for admission or participation or other
114 fees paid by or other charges to individuals in or for any place of amusement,
115 entertainment or recreation, games or athletic events, including museums, fairs,
116 zoos and planetariums[, owned or operated by a municipality or other political
117 subdivision where all the proceeds derived therefrom benefit the municipality or
118 other political subdivision and do not inure to any private person, firm, or
119 corporation];

120 (18) All sales of insulin and prosthetic or orthopedic devices as defined on
121 January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the
122 Social Security Act of 1965, including the items specified in Section 1862(a)(12)
123 of that act, and also specifically including hearing aids and hearing aid supplies
124 and all sales of drugs which may be legally dispensed by a licensed pharmacist
125 only upon a lawful prescription of a practitioner licensed to administer those
126 items, including samples and materials used to manufacture samples which may

127 be dispensed by a practitioner authorized to dispense such samples and all sales
128 of medical oxygen, home respiratory equipment and accessories, hospital beds and
129 accessories and ambulatory aids, all sales of manual and powered wheelchairs,
130 stairway lifts, Braille writers, electronic Braille equipment and, if purchased by
131 or on behalf of a person with one or more physical or mental disabilities to enable
132 them to function more independently, all sales of scooters, reading machines,
133 electronic print enlargers and magnifiers, electronic alternative and augmentative
134 communication devices, and items used solely to modify motor vehicles to permit
135 the use of such motor vehicles by individuals with disabilities or sales of
136 over-the-counter or nonprescription drugs to individuals with disabilities;

137 (19) All sales made by or to religious and charitable organizations and
138 institutions in their religious, charitable or educational functions and activities
139 and all sales made by or to all elementary and secondary schools operated at
140 public expense in their educational functions and activities;

141 (20) All sales of aircraft to common carriers for storage or for use in
142 interstate commerce and all sales made by or to not-for-profit civic, social, service
143 or fraternal organizations, including fraternal organizations which have been
144 declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the
145 1986 Internal Revenue Code, as amended, in their civic or charitable functions
146 and activities and all sales made to eleemosynary and penal institutions and
147 industries of the state, and all sales made to any private not-for-profit institution
148 of higher education not otherwise excluded pursuant to subdivision (19) of this
149 subsection or any institution of higher education supported by public funds, and
150 all sales made to a state relief agency in the exercise of relief functions and
151 activities;

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

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

163 in the production of crops, livestock or poultry for food or fiber, all sales of
164 bedding used in the production of livestock or poultry for food or fiber, all sales
165 of propane or natural gas, electricity or diesel fuel used exclusively for drying
166 agricultural crops, natural gas used in the primary manufacture or processing of
167 fuel ethanol as defined in section 142.028, natural gas, propane, and electricity
168 used by an eligible new generation cooperative or an eligible new generation
169 processing entity as defined in section 348.432, and all sales of farm machinery
170 and equipment, other than airplanes, motor vehicles and trailers. As used in this
171 subdivision, the term "feed additives" means tangible personal property which,
172 when mixed with feed for livestock or poultry, is to be used in the feeding of
173 livestock or poultry. As used in this subdivision, the term "pesticides" includes
174 adjuvants such as crop oils, surfactants, wetting agents and other assorted
175 pesticide carriers used to improve or enhance the effect of a pesticide and the
176 foam used to mark the application of pesticides and herbicides for the production
177 of crops, livestock or poultry. As used in this subdivision, the term "farm
178 machinery and equipment" means new or used farm tractors and such other new
179 or used farm machinery and equipment and repair or replacement parts thereon,
180 and supplies and lubricants used exclusively, solely, and directly for producing
181 crops, raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for
182 producing milk for ultimate sale at retail, including field drain tile, and one-half
183 of each purchaser's purchase of diesel fuel therefor which is:

184 (a) Used exclusively for agricultural purposes;

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

187 (c) Used directly in producing farm products to be sold ultimately in
188 processed form or otherwise at retail or in producing farm products to be fed to
189 livestock or poultry to be sold ultimately in processed form at retail;

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

194 (a) "Domestic use" means that portion of metered water service,
195 electricity, electrical current, natural, artificial or propane gas, wood, coal or
196 home heating oil, and in any city not within a county, metered or unmetered
197 water service, which an individual occupant of a residential premises uses for
198 nonbusiness, noncommercial or nonindustrial purposes. Utility service through

199 a single or master meter for residential apartments or condominiums, including
200 service for common areas and facilities and vacant units, shall be deemed to be
201 for domestic use. Each seller shall establish and maintain a system whereby
202 individual purchases are determined as exempt or nonexempt;

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

215 (c) Each person making domestic use purchases of services or property
216 and who uses any portion of the services or property so purchased for a
217 nondomestic use shall, by the fifteenth day of the fourth month following the year
218 of purchase, and without assessment, notice or demand, file a return and pay
219 sales tax on that portion of nondomestic purchases. Each person making
220 nondomestic purchases of services or property and who uses any portion of the
221 services or property so purchased for domestic use, and each person making
222 domestic purchases on behalf of occupants of residential apartments or
223 condominiums through a single or master meter, including service for common
224 areas and facilities and vacant units, under a nonresidential utility service rate
225 classification may, between the first day of the first month and the fifteenth day
226 of the fourth month following the year of purchase, apply for credit or refund to
227 the director of revenue and the director shall give credit or make refund for taxes
228 paid on the domestic use portion of the purchase. The person making such
229 purchases on behalf of occupants of residential apartments or condominiums shall
230 have standing to apply to the director of revenue for such credit or refund;

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

235 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041,
236 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United
237 States Code. The director of revenue shall promulgate rules pursuant to chapter
238 536 to eliminate all state and local sales taxes on such excise taxes;

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

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

248 (28) Computers, computer software and computer security systems
249 purchased for use by architectural or engineering firms headquartered in this
250 state. For the purposes of this subdivision, "headquartered in this state" means
251 the office for the administrative management of at least four integrated facilities
252 operated by the taxpayer is located in the state of Missouri;

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

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

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

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

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

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

270 (35) All sales of feed which are developed for and used in the feeding of

271 pets owned by a commercial breeder when such sales are made to a commercial
272 breeder, as defined in section 273.325, and licensed pursuant to sections 273.325
273 to 273.357;

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

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

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

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

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

307 event;

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

312 (40) Beginning January 1, 2009, but not after January 1, 2015, materials,
313 replacement parts, and equipment purchased for use directly upon, and for the
314 modification, replacement, repair, and maintenance of aircraft, aircraft power
315 plants, and aircraft accessories;

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

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