

FIRST REGULAR SESSION

SENATE BILL NO. 57

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Pre-filed December 1, 2014, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0289S.011

AN ACT

To repeal section 144.030, RSMo, and to enact in lieu thereof two new sections relating to sales and use tax exemptions, with an effective date for a certain section.

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

Section A. Section 144.030, RSMo, is repealed and two new sections enacted
2 in lieu thereof, to be known as sections 144.030 and 144.810, 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 or
3 payable pursuant to sections 144.010 to 144.525 such retail sales as may be made in
4 commerce between this state and any other state of the United States, or between this
5 state and any foreign country, and any retail sale which the state of Missouri is
6 prohibited from taxing pursuant to the Constitution or laws of the United States of
7 America, and such retail sales of tangible personal property which the general
8 assembly of the state of Missouri is prohibited from taxing or further taxing by the
9 constitution of this state.

10 2. There are also specifically exempted from the provisions of the local sales
11 tax law as defined in section 32.085, section 238.235, and sections 144.010 to 144.525
12 and 144.600 to 144.761 and from the computation of the tax levied, assessed or
13 payable pursuant to the local sales tax law as defined in section 32.085, section
14 238.235, 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 all
16 or part of such excise tax is refunded pursuant to section 142.824; or upon the sale
17 at retail of fuel to be consumed in manufacturing or creating gas, power, steam,
18 electrical current or in furnishing water to be sold ultimately at retail; or feed for
19 livestock or poultry; or grain to be converted into foodstuffs which are to be sold
20 ultimately in processed form at retail; or seed, limestone or fertilizer which is to be
21 used for seeding, liming or fertilizing crops which when harvested will be sold at

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

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

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

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

50 (5) Replacement machinery, equipment, and parts and the materials and
51 supplies solely required for the installation or construction of such replacement
52 machinery, equipment, and parts, used directly in manufacturing, mining, fabricating
53 or producing a product which is intended to be sold ultimately for final use or
54 consumption; and machinery and equipment, and the materials and supplies required
55 solely for the operation, installation or construction of such machinery and equipment,
56 purchased and used to establish new, or to replace or expand existing, material
57 recovery processing plants in this state. For the purposes of this subdivision, a
58 "material recovery processing plant" means a facility that has as its primary purpose
59 the recovery of materials into a usable product or a different form which is used in

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

68 (6) Machinery and equipment, and parts and the materials and supplies solely
69 required for the installation or construction of such machinery and equipment,
70 purchased and used to establish new or to expand existing manufacturing, mining or
71 fabricating plants in the state if such machinery and equipment is used directly in
72 manufacturing, mining or fabricating a product which is intended to be sold
73 ultimately for final use or consumption;

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

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

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

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

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

86 (12) Railroad rolling stock for use in transporting persons or property in
87 interstate commerce and motor vehicles licensed for a gross weight of twenty-four
88 thousand pounds or more or trailers used by common carriers, as defined in section
89 390.020, in the transportation of persons or property;

90 (13) Electrical energy used in the actual primary manufacture, processing,
91 compounding, mining or producing of a product, or electrical energy used in the actual
92 secondary processing or fabricating of the product, or a material recovery processing
93 plant as defined in subdivision (5) of this subsection, in facilities owned or leased by
94 the taxpayer, if the total cost of electrical energy so used exceeds ten percent of the
95 total cost of production, either primary or secondary, exclusive of the cost of electrical
96 energy so used or if the raw materials used in such processing contain at least
97 twenty-five percent recovered materials as defined in section 260.200. There shall be

98 a rebuttable presumption that the raw materials used in the primary manufacture of
99 automobiles contain at least twenty-five percent recovered materials. For purposes
100 of this subdivision, "processing" means any mode of treatment, act or series of acts
101 performed upon materials to transform and reduce them to a different state or thing,
102 including treatment necessary to maintain or preserve such processing by the
103 producer at the production facility;

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

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

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

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

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

128 (19) All sales of insulin and prosthetic or orthopedic devices as defined on
129 January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the
130 Social Security Act of 1965, including the items specified in Section 1862(a)(12) of that
131 act, and also specifically including hearing aids and hearing aid supplies and all sales
132 of drugs which may be legally dispensed by a licensed pharmacist only upon a lawful
133 prescription of a practitioner licensed to administer those items, including samples
134 and materials used to manufacture samples which may be dispensed by a practitioner
135 authorized to dispense such samples and all sales or rental of medical oxygen, home

136 respiratory equipment and accessories, hospital beds and accessories and ambulatory
137 aids, all sales or rental of manual and powered wheelchairs, stairway lifts, Braille
138 writers, electronic Braille equipment and, if purchased or rented by or on behalf of a
139 person with one or more physical or mental disabilities to enable them to function
140 more independently, all sales or rental of scooters, reading machines, electronic print
141 enlargers and magnifiers, electronic alternative and augmentative communication
142 devices, and items used solely to modify motor vehicles to permit the use of such
143 motor vehicles by individuals with disabilities or sales of over-the-counter or
144 nonprescription drugs to individuals with disabilities, and drugs required by the Food
145 and Drug Administration to meet the over-the-counter drug product labeling
146 requirements in 21 CFR 201.66, or its successor, as prescribed by a health care
147 practitioner licensed to prescribe;

148 (20) All sales made by or to religious and charitable organizations and
149 institutions in their religious, charitable or educational functions and activities and
150 all sales made by or to all elementary and secondary schools operated at public
151 expense in their educational functions and activities;

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

162 (22) All ticket sales made by benevolent, scientific and educational
163 associations which are formed to foster, encourage, and promote progress and
164 improvement in the science of agriculture and in the raising and breeding of animals,
165 and by nonprofit summer theater organizations if such organizations are exempt from
166 federal tax pursuant to the provisions of the Internal Revenue Code and all admission
167 charges and entry fees to the Missouri state fair or any fair conducted by a county
168 agricultural and mechanical society organized and operated pursuant to sections
169 262.290 to 262.530;

170 (23) All sales made to any private not-for-profit elementary or secondary
171 school, all sales of feed additives, medications or vaccines administered to livestock
172 or poultry in the production of food or fiber, all sales of pesticides used in the
173 production of crops, livestock or poultry for food or fiber, all sales of bedding used in

174 the production of livestock or poultry for food or fiber, all sales of propane or natural
175 gas, electricity or diesel fuel used exclusively for drying agricultural crops, natural gas
176 used in the primary manufacture or processing of fuel ethanol as defined in section
177 142.028, natural gas, propane, and electricity used by an eligible new generation
178 cooperative or an eligible new generation processing entity as defined in section
179 348.432, and all sales of farm machinery and equipment, other than airplanes, motor
180 vehicles and trailers, and any freight charges on any exempt item. As used in this
181 subdivision, the term "feed additives" means tangible personal property which, when
182 mixed with feed for livestock or poultry, is to be used in the feeding of livestock or
183 poultry. As used in this subdivision, the term "pesticides" includes adjuvants such as
184 crop oils, surfactants, wetting agents and other assorted pesticide carriers used to
185 improve or enhance the effect of a pesticide and the foam used to mark the application
186 of pesticides and herbicides for the production of crops, livestock or poultry. As used
187 in this subdivision, the term "farm machinery and equipment" means new or used
188 farm tractors and such other new or used farm machinery and equipment and repair
189 or replacement parts thereon and any accessories for and upgrades to such farm
190 machinery and equipment, rotary mowers used exclusively for agricultural purposes,
191 and supplies and lubricants used exclusively, solely, and directly for producing crops,
192 raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing
193 milk for ultimate sale at retail, including field drain tile, and one-half of each
194 purchaser's purchase of diesel fuel therefor which is:

195 (a) Used exclusively for agricultural purposes;
196 (b) Used on land owned or leased for the purpose of producing farm products;
197 and

198 (c) Used directly in producing farm products to be sold ultimately in processed
199 form or otherwise at retail or in producing farm products to be fed to livestock or
200 poultry to be sold ultimately in processed form at retail;

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

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

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

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

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

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

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

248 (27) Sales of fuel consumed or used in the operation of ships, barges, or
249 waterborne vessels which are used primarily in or for the transportation of property

250 or cargo, or the conveyance of persons for hire, on navigable rivers bordering on or
251 located in part in this state, if such fuel is delivered by the seller to the purchaser's
252 barge, ship, or waterborne vessel while it is afloat upon such river;

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

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

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

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

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

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

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

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

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

281 (37) All purchases by a contractor on behalf of an entity located in another
282 state, provided that the entity is authorized to issue a certificate of exemption for
283 purchases to a contractor under the provisions of that state's laws. For purposes of
284 this subdivision, the term "certificate of exemption" shall mean any document
285 evidencing that the entity is exempt from sales and use taxes on purchases pursuant
286 to the laws of the state in which the entity is located. Any contractor making
287 purchases on behalf of such entity shall maintain a copy of the entity's exemption

288 certificate as evidence of the exemption. If the exemption certificate issued by the
289 exempt entity to the contractor is later determined by the director of revenue to be
290 invalid for any reason and the contractor has accepted the certificate in good faith,
291 neither the contractor or the exempt entity shall be liable for the payment of any
292 taxes, interest and penalty due as the result of use of the invalid exemption
293 certificate. Materials shall be exempt from all state and local sales and use taxes
294 when purchased by a contractor for the purpose of fabricating tangible personal
295 property which is used in fulfilling a contract for the purpose of constructing,
296 repairing or remodeling facilities for the following:

297 (a) An exempt entity located in this state, if the entity is one of those entities
298 able to issue project exemption certificates in accordance with the provisions of section
299 144.062; or

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

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

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

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

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

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

326 **(43) Amounts paid for instructional classes, training, or membership**
327 **at a fitness facility, gymnasium, or dance studio. The director of revenue**
328 **shall promulgate a rule or regulation to effectuate the provisions of this**
329 **subdivision.**

330 3. Any ruling, agreement, or contract, whether written or oral, express or
331 implied, between a person and this state's executive branch, or any other state agency
332 or department, stating, agreeing, or ruling that such person is not required to collect
333 sales and use tax in this state despite the presence of a warehouse, distribution
334 center, or fulfillment center in this state that is owned or operated by the person or
335 an affiliated person shall be null and void unless it is specifically approved by a
336 majority vote of each of the houses of the general assembly. For purposes of this
337 subsection, an "affiliated person" means any person that is a member of the same
338 controlled group of corporations as defined in Section 1563(a) of the Internal Revenue
339 Code of 1986, as amended, as the vendor or any other entity that, notwithstanding its
340 form of organization, bears the same ownership relationship to the vendor as a
341 corporation that is a member of the same controlled group of corporations as defined
342 in Section 1563(a) of the Internal Revenue Code, as amended.

144.810. 1. As used in this section, unless the context clearly
2 **indicates otherwise, the following terms mean:**

3 **(1) "Commencement of commercial operations", shall be deemed to**
4 **occur during the first calendar year for which the data storage center is**
5 **first available for use by the operating taxpayer, or first capable of being**
6 **used by the operating taxpayer, as a data storage center;**

7 **(2) "Constructing taxpayer", where more than one taxpayer is**
8 **responsible for a project, a taxpayer responsible for the construction of the**
9 **facility, as opposed to a taxpayer responsible for the equipping and ongoing**
10 **operations of the facility;**

11 **(3) "County average wage", the average wages in each county as**
12 **determined by the department for the most recently completed full calendar**
13 **year. However, if the computed county average wage is above the statewide**
14 **average wage, the statewide average wage shall be deemed the county**
15 **average wage for such county for the purpose of determining eligibility;**

16 **(4) "Data storage center" or "facility", a facility constructed,**
17 **extended, improved, or operating under this section, provided that such**
18 **business facility is engaged primarily in:**

19 **(a) Data processing, hosting, and related services (NAICS 518210); or**

20 **(b) Internet publishing and broadcasting and web search portals**
21 **(NAICS 519130), at the business facility;**

22 (5) "Existing facility", a data storage center in this state as it existed
23 prior to August 28, 2015, as determined by the department;

24 (6) "Expanding facility" or "expanding data storage center", an
25 existing facility or replacement facility that expands its operations in this
26 state on or after August 28, 2015, and has net new investment related to the
27 expansion of operations in this state of at least five million dollars during
28 a period of up to twelve consecutive months and results in the creation of
29 at least five new jobs during a period of up to twenty-four consecutive
30 months from the date of conditional approval for an exemption under this
31 section, if the average wage of the new jobs equals or exceeds one hundred
32 and fifty percent of the county average wage. An expanding facility shall
33 continue to be an expanding facility regardless of a subsequent change in
34 or addition of operating taxpayers or constructing taxpayers;

35 (7) "Expanding facility project" or "expanding data storage center
36 project", the construction, extension, improvement, equipping, and
37 operation of an expanding facility;

38 (8) "Investment" shall include the value of real and depreciable
39 personal property, acquired as part of the new or expanding facility project
40 which is used in the operation of the facility following conditional approval
41 of an exemption under this section;

42 (9) "NAICS", the 2007 edition of the North American Industry
43 Classification System as prepared by the Executive Office of the President,
44 Office of Management and Budget. Any NAICS sector, subsector, industry
45 group, or industry identified in this section shall include its corresponding
46 classification in previous and subsequent federal industry classification
47 systems;

48 (10) "New facility" or "new data storage center", a facility in this state
49 meeting the following requirements:

50 (a) The facility is acquired by, or leased to, an operating taxpayer
51 on or after August 28, 2015. A facility shall be deemed to have been
52 acquired by, or leased to, an operating taxpayer on or after August 28, 2015,
53 if the transfer of title to an operating taxpayer, the transfer of possession
54 under a binding contract to transfer title to an operating taxpayer, or the
55 commencement of the term of the lease to an operating taxpayer occurs on
56 or after August 28, 2015, or, if the facility is constructed, erected, or
57 installed by or on behalf of an operating taxpayer, such construction,
58 erection, or installation is commenced on or after August 28, 2015;

59 (b) If such facility was acquired by an operating or constructing

60 taxpayer from another person or persons on or after August 28, 2015, and
61 such facility was employed prior to August 28, 2015, by any other person or
62 persons in the operation of a data storage center the facility shall not be
63 considered a new facility;

64 (c) Such facility is not an expanding or replacement facility, as
65 defined in this section;

66 (d) The new facility project investment is at least thirty-seven
67 million dollars during a period of up to thirty-six consecutive months from
68 the date of the conditional approval for an exemption under this
69 section. Where more than one taxpayer is responsible for a project, the
70 investment requirement may be met by an operating taxpayer, a
71 constructing taxpayer, or a combination of constructing taxpayers and
72 operating taxpayers;

73 (e) At least thirty new jobs are created at the new facility during a
74 period of up to thirty-six consecutive months from the date of conditional
75 approval for an exemption under this section if the average wage of the
76 new jobs equals or exceeds one hundred fifty percent of the county average
77 wage; and

78 (f) A new facility shall continue to be a new facility regardless of a
79 subsequent change in or addition of operating taxpayers or constructing
80 taxpayers;

81 (11) "New data storage center project" or "new facility project", the
82 construction, extension, improvement, equipping, and operation of a new
83 facility;

84 (12) "New job", in the case of a new data center project, the total
85 number of full-time employees located at a new data storage center for a
86 period of up to thirty-six consecutive months from the date of conditional
87 approval for an exemption under this section. In the case of an expanding
88 data storage center project, the total number of full-time employees located
89 at the expanding data storage center that exceeds the greater of the
90 number of full-time employees located at the project facility on the date of
91 the submission of a project plan under this section or for the twelve-month
92 period prior to the date of the submission of a project plan, the average
93 number of full-time employees located at the expanding data storage center
94 facility. In the event the expanding data storage center facility has not
95 been in operation for a full twelve-month period at the time of the
96 submission of a project plan, the total number of full-time employees
97 located at the expanded data storage center that exceeds the greater of the

98 number of full-time employees located at the project facility on the date of
99 the submission of a project plan under this section or the average number
100 of full-time employees for the number of months the expanding data storage
101 center facility has been in operation prior to the date of the submission of
102 the project plan;

103 (13) "Notice of intent", a form developed by the department of
104 economic development, completed by the project taxpayer, and submitted
105 to the department, which states the project taxpayer's intent to construct
106 or expand a data center and request the exemptions under this program;

107 (14) "Operating taxpayer", where more than one taxpayer is
108 responsible for a project, a taxpayer responsible for the equipping and
109 ongoing operations of the facility, as opposed to a taxpayer responsible for
110 the purchasing or construction of the facility;

111 (15) "Project taxpayers", each constructing taxpayer and each
112 operating taxpayer for a data storage center project;

113 (16) "Replacement facility", a facility in this state otherwise
114 described in subdivision (7) of this subsection, but which replaces another
115 facility located within the state, which the taxpayer or a related taxpayer
116 previously operated but discontinued operating within one year prior to
117 the commencement of commercial operations at the new facility;

118 (17) "Taxpayer", the purchaser of tangible personal property or a
119 service that is subject to state or local sales or use tax and from whom state
120 or local sales or use tax is owed. Taxpayer shall not mean the seller
121 charged by law with collecting the sales tax from the purchaser.

122 2. In addition to the exemptions granted under chapter 144, project
123 taxpayers for a new data storage center project shall be entitled, for a
124 project period not to exceed fifteen years from the date of conditional
125 approval under this section and subject to the requirements of subsection
126 3 of this section, to an exemption of one hundred percent of the state and
127 local sales and use taxes defined, levied, or calculated under section 32.085,
128 sections 144.010 to 144.525, sections 144.600 to 144.761, or section 238.235,
129 limited to the net fiscal benefit of the state calculated over a ten year
130 period, on:

131 (1) All electrical energy, gas, water, and other utilities including
132 telecommunication and internet services used in a new data storage center;

133 (2) All machinery, equipment, and computers used in any new data
134 storage center; and

135 (3) All sales at retail of tangible personal property and materials for

136 the purpose of constructing any new data storage center.

137 The amount of any exemption provided under this subsection shall not
138 exceed the projected net fiscal benefit to the state over a period of ten
139 years, as determined by the department of economic development using the
140 Regional Economic Modeling, Inc. dataset or comparable data.

141 3. (1) Any data storage center project seeking a tax exemption under
142 subsection 2 of this section shall submit a notice of intent and a project
143 plan to the department of economic development, which shall identify each
144 known constructing taxpayer and known operating taxpayer for the project
145 and include any additional information the department of economic
146 development may require to determine eligibility for the exemption. The
147 department of economic development shall review the project plan and
148 determine whether the project is eligible for the exemption under
149 subsection 2 of this section, conditional upon subsequent verification by the
150 department that the project meets the requirements in subsection 1 of this
151 section for a new facility project.

152 (2) The department of economic development shall convey
153 conditional approvals to the department of revenue and the identified
154 project taxpayers. After a conditionally approved new facility has met the
155 requirements in subsection 1 of this section for a new facility and the
156 execution of the agreement specified in subsection 6 of this section, the
157 project taxpayers shall provide proof of the same to the department of
158 economic development. Upon verification of such proof, the department of
159 economic development shall certify the new facility to the department of
160 revenue as being eligible for the exemption dating retroactively to the first
161 day of construction on the new facility. The department of revenue, upon
162 receipt of adequate proof of the amount of sales taxes paid since the first
163 day of construction, shall issue a refund of taxes paid but eligible for
164 exemption under subsection 2 of this section to each operating taxpayer
165 and each constructing taxpayer and issue a certificate of exemption to each
166 new project taxpayer for ongoing exemptions under subsection 2 of this
167 section.

168 4. In addition to the exemptions granted under chapter 144, upon
169 approval by the department of economic development, project taxpayers for
170 expanding data center projects may, for a period not to exceed ten years,
171 be specifically exempted from state and local sales and use taxes defined,
172 levied, or calculated under section 32.085, sections 144.010 to 144.525,
173 sections 144.600 to 144.761, or section 238.235 on:

174 (1) All electrical energy, gas, water, and other utilities including
175 telecommunication and internet services used in an expanding data storage
176 center which, on an annual basis, exceeds the amount of electrical energy,
177 gas, water, and other utilities including telecommunication and internet
178 services used in the existing facility or the replaced facility prior to the
179 expansion. For purposes of this subdivision only, "amount" shall be
180 measured in kilowatt hours, gallons, cubic feet, or other measures
181 applicable to a utility service as opposed to in dollars, to account for
182 increases in utility rates;

183 (2) All machinery, equipment, and computers used in any expanding
184 data storage center, the cost of which, on an annual basis, exceeds the
185 average of the previous three years' expenditures on machinery, equipment,
186 and computers at the existing facility or the replaced facility prior to the
187 expansion. Existing facilities or replaced facilities in existence for less
188 than three years shall have the average expenditures calculated based upon
189 the applicable time of existence; and

190 (3) All sales at retail of tangible personal property and materials for
191 the purpose of constructing, repairing, or remodeling any expanding data
192 storage center.

193 The amount of any exemption provided under this subsection shall not
194 exceed the projected net fiscal benefit to the state over a period of ten
195 years, as determined by the department of economic development.

196 5. (1) Any data storage center project seeking a tax exemption under
197 subsection 4 of this section shall submit a notice of intent and a project
198 plan to the department of economic development, which shall identify each
199 known constructing taxpayer and each known operating taxpayer for the
200 project and include any additional information the department of economic
201 development may reasonably require to determine eligibility for the
202 exemption. The department of economic development shall review the
203 project plan and determine whether the project is eligible for the
204 exemption under subsection 4 of this section, conditional upon subsequent
205 verification by the department that the project meets the requirements in
206 subsection 1 of this section for an expanding facility project and the
207 execution of the agreement specified in subsection 6 of this section.

208 (2) The department of economic development shall convey such
209 conditional approval to the department of revenue and the identified
210 project taxpayers. After a conditional approved facility has met the
211 requirements in subsection 1 of this section, the project taxpayers shall

212 provide proof of the same to the department of economic
213 development. Upon verification of such proof, the department of economic
214 development shall certify the project to the department of revenue as being
215 eligible for the exemption dating retroactively to the first day of the
216 expansion of the facility. The department of revenue, upon receipt of
217 adequate proof of the amount of sales taxes paid since the first day of the
218 expansion of the facility, shall issue a refund of taxes paid but eligible for
219 exemption under subsection 4 of this section to any applicable project
220 taxpayer and issue a certificate of exemption to any applicable project
221 taxpayer for ongoing exemptions under subsection 4 of this section.

222 6. (1) The exemptions in subsections 2 and 4 of this section shall be
223 tied to the new or expanding facility project. A certificate of exemption in
224 the hands of a taxpayer that is no longer an operating or constructing
225 taxpayer of the new or expanding facility project shall be invalid as of the
226 date the taxpayer was no longer an operating or constructing taxpayer of
227 the new or expanding facility project. New certificates of exemption shall
228 be issued to successor constructing taxpayers and operating taxpayers at
229 such new or expanding facility projects. The right to the exemption by
230 successor taxpayers shall exist without regard to subsequent levels of
231 investment in the new or expanding facility by successor taxpayers.

232 (2) As a condition of receiving an exemption under subsection 2 or
233 4 of this section, the project taxpayers shall enter into an agreement with
234 the department of economic development providing for repayment penalties
235 in the event the data storage center project fails to comply with any of the
236 requirements of this section.

237 (3) The department of revenue shall credit any amounts remitted by
238 the project taxpayers under this subsection to the fund to which the sales
239 and use taxes exempted would have otherwise been credited.

240 7. The department of economic development and the department of
241 revenue shall cooperate in conducting random audits to ensure that the
242 intent of this section is followed.

243 8. Notwithstanding any other provision of law to the contrary, no
244 recipient of an exemption pursuant to this section shall be eligible for
245 benefits under any business recruitment tax credit, as defined in section
246 135.800.

247 9. The department of economic development and the department of
248 revenue shall jointly prescribe such rules and regulations necessary to
249 carry out the provisions of this section. Any rule or portion of a rule, as

250 that term is defined in section 536.010, that is created under the authority
251 delegated in this section shall become effective only if it complies with and
252 is subject to all of the provisions of chapter 536 and, if applicable, section
253 536.028. This section and chapter 536 are nonseverable and if any of the
254 powers vested with the general assembly pursuant to chapter 536 to review,
255 to delay the effective date, or to disapprove and annul a rule are
256 subsequently held unconstitutional, then the grant of rulemaking authority
257 and any rule proposed or adopted after August 28, 2015, shall be invalid and
258 void.

Section B. The repeal and reenactment of section 144.030 of this act shall
2 become effective on January 1, 2016.

✓

Bill

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