

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE SUBSTITUTE FOR

# SENATE BILL NO. 928

95TH GENERAL ASSEMBLY

2010

4870S.04T

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## AN ACT

To repeal section 144.030, RSMo, and to enact in lieu thereof two new sections relating to the sales tax treatment of sales for resale, with an emergency clause.

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*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Section A. Section 144.030, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 144.018 and 144.030, to read as follows:

**144.018. 1. Notwithstanding any other provision of law to the contrary, except as provided under subsections 2 or 3 of this section, when a purchase of tangible personal property or service subject to tax is made for the purpose of resale, such purchase shall be either exempt or excluded under this chapter if the subsequent sale is:**

- (1) Subject to a tax in this or any other state;**
- (2) For resale;**
- (3) Excluded from tax under this chapter;**
- (4) Subject to tax but exempt under this chapter; or**
- (5) Exempt from the sales tax laws of another state, if the subsequent sale is in such other state.**

**The purchase of tangible personal property by a taxpayer shall not be deemed to be for resale if such property is used or consumed by the taxpayer in providing a service on which tax is not imposed by subsection 1 of section 144.020, except purchases made in fulfillment of any obligation under a defense contract with the United States government.**

18           **2. For purposes of subdivision (2) of subsection 1 of section**  
19 **144.020, a place of amusement, entertainment or recreation, including**  
20 **games or athletic events, shall remit tax on the amount paid for**  
21 **admissions or seating accommodations, or fees paid to, or in such place**  
22 **of amusement, entertainment or recreation. Any subsequent sale of**  
23 **such admissions or seating accommodations shall not be subject to tax**  
24 **if the initial sale was an arms length transaction for fair market value**  
25 **with an unaffiliated entity. If the sale of such admissions or seating**  
26 **accommodations is exempt or excluded from payment of sales and use**  
27 **taxes, the provisions of this subsection shall not require the place of**  
28 **amusement, entertainment, or recreation to remit tax on that sale.**

29           **3. For purposes of subdivision (6) of subsection 1 of section**  
30 **144.020, a hotel, motel, tavern, inn, restaurant, eating house, drugstore,**  
31 **dining car, tourist cabin, tourist camp, or other place in which rooms,**  
32 **meals, or drinks are regularly served to the public shall remit tax on**  
33 **the amount of sales or charges for all rooms, meals, and drinks**  
34 **furnished at such hotel, motel, tavern, inn, restaurant, eating house,**  
35 **drugstore, dining car, tourist cabin, tourist camp, or other place in**  
36 **which rooms, meals, or drinks are regularly served to the public. Any**  
37 **subsequent sale of such rooms, meals, or drinks shall not be subject to**  
38 **tax if the initial sale was an arms length transaction for fair market**  
39 **value with an unaffiliated entity. If the sale of such rooms, meals, or**  
40 **drinks is exempt or excluded from payment of sales and use taxes, the**  
41 **provisions of this subsection shall not require the hotel, motel, tavern,**  
42 **inn, restaurant, eating house, drugstore, dining car, tourist cabin,**  
43 **tourist camp, or other place in which rooms, meals, or drinks are**  
44 **regularly served to the public to remit tax on that sale.**

45           **4. The provisions of this section are intended to reject and**  
46 **abrogate earlier case law interpretations of the state's sales and use tax**  
47 **law with regard to sales for resale as extended in Music City Centre**  
48 **Management, LLC v. Director of Revenue, 295 S.W.3d 465, (Mo. 2009)**  
49 **and ICC Management, Inc. v. Director of Revenue, 290 S.W.3d 699, (Mo.**  
50 **2009).**

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, RSMo, section 238.235, RSMo, and  
12 sections 144.010 to 144.525 and 144.600 to 144.761 and from the computation of  
13 the tax levied, assessed or payable pursuant to the local sales tax law as defined  
14 in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525  
15 and 144.600 to 144.745:

16 (1) Motor fuel or special fuel subject to an excise tax of this state, unless  
17 all or part of such excise tax is refunded pursuant to section 142.824, RSMo; or  
18 upon the sale at retail of fuel to be consumed in manufacturing or creating gas,  
19 power, steam, electrical current or in furnishing water to be sold ultimately at  
20 retail; or feed for livestock or poultry; or grain to be converted into foodstuffs  
21 which are to be sold ultimately in processed form at retail; or seed, limestone or  
22 fertilizer which is to be used for seeding, liming or fertilizing crops which when  
23 harvested will be sold at retail or will be fed to livestock or poultry to be sold  
24 ultimately in processed form at retail; economic poisons registered pursuant to  
25 the provisions of the Missouri pesticide registration law (sections 281.220 to  
26 281.310, RSMo) which are to be used in connection with the growth or production  
27 of crops, fruit trees or orchards applied before, during, or after planting, the crop  
28 of which when harvested will be sold at retail or will be converted into foodstuffs  
29 which are to be sold ultimately in processed form at retail;

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

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

45 (4) Replacement machinery, equipment, and parts and the materials and  
46 supplies solely required for the installation or construction of such replacement  
47 machinery, equipment, and parts, used directly in manufacturing, mining,  
48 fabricating or producing a product which is intended to be sold ultimately for  
49 final use or consumption; and machinery and equipment, and the materials and  
50 supplies required solely for the operation, installation or construction of such  
51 machinery and equipment, purchased and used to establish new, or to replace or  
52 expand existing, material recovery processing plants in this state. For the  
53 purposes of this subdivision, a "material recovery processing plant" means a  
54 facility that has as its primary purpose the recovery of materials into a useable  
55 product or a different form which is used in producing a new product and shall  
56 include a facility or equipment which are used exclusively for the collection of  
57 recovered materials for delivery to a material recovery processing plant but shall  
58 not include motor vehicles used on highways. For purposes of this section, the  
59 terms motor vehicle and highway shall have the same meaning pursuant to  
60 section 301.010, RSMo. Material recovery is not the reuse of materials within a  
61 manufacturing process or the use of a product previously recovered. The material  
62 recovery processing plant shall qualify under the provisions of this section  
63 regardless of ownership of the material being recovered;

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

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

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

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

77 public;

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

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

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

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

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

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

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

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

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

121 (18) All sales of insulin and prosthetic or orthopedic devices as defined on  
122 January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the  
123 Social Security Act of 1965, including the items specified in Section 1862(a)(12)  
124 of that act, and also specifically including hearing aids and hearing aid supplies  
125 and all sales of drugs which may be legally dispensed by a licensed pharmacist  
126 only upon a lawful prescription of a practitioner licensed to administer those  
127 items, including samples and materials used to manufacture samples which may  
128 be dispensed by a practitioner authorized to dispense such samples and all sales  
129 of medical oxygen, home respiratory equipment and accessories, hospital beds and  
130 accessories and ambulatory aids, all sales of manual and powered wheelchairs,  
131 stairway lifts, Braille writers, electronic Braille equipment and, if purchased by  
132 or on behalf of a person with one or more physical or mental disabilities to enable  
133 them to function more independently, all sales of scooters, reading machines,  
134 electronic print enlargers and magnifiers, electronic alternative and augmentative  
135 communication devices, and items used solely to modify motor vehicles to permit  
136 the use of such motor vehicles by individuals with disabilities or sales of  
137 over-the-counter or nonprescription drugs to individuals with disabilities;

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

142 (20) All sales of aircraft to common carriers for storage or for use in  
143 interstate commerce and all sales made by or to not-for-profit civic, social, service  
144 or fraternal organizations, including fraternal organizations which have been  
145 declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the  
146 1986 Internal Revenue Code, as amended, in their civic or charitable functions  
147 and activities and all sales made to eleemosynary and penal institutions and  
148 industries of the state, and all sales made to any private not-for-profit institution

149 of higher education not otherwise excluded pursuant to subdivision (19) of this  
150 subsection or any institution of higher education supported by public funds, and  
151 all sales made to a state relief agency in the exercise of relief functions and  
152 activities;

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

161 (22) All sales made to any private not-for-profit elementary or secondary  
162 school, all sales of feed additives, medications or vaccines administered to  
163 livestock or poultry in the production of food or fiber, all sales of pesticides used  
164 in the production of crops, livestock or poultry for food or fiber, all sales of  
165 bedding used in the production of livestock or poultry for food or fiber, all sales  
166 of propane or natural gas, electricity or diesel fuel used exclusively for drying  
167 agricultural crops, natural gas used in the primary manufacture or processing of  
168 fuel ethanol as defined in section 142.028, RSMo, natural gas, propane, and  
169 electricity used by an eligible new generation cooperative or an eligible new  
170 generation processing entity as defined in section 348.432, RSMo, and all sales  
171 of farm machinery and equipment, other than airplanes, motor vehicles and  
172 trailers. As used in this subdivision, the term "feed additives" means tangible  
173 personal property which, when mixed with feed for livestock or poultry, is to be  
174 used in the feeding of livestock or poultry. As used in this subdivision, the term  
175 "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and  
176 other assorted pesticide carriers used to improve or enhance the effect of a  
177 pesticide and the foam used to mark the application of pesticides and herbicides  
178 for the production of crops, livestock or poultry. As used in this subdivision, the  
179 term "farm machinery and equipment" means new or used farm tractors and such  
180 other new or used farm machinery and equipment and repair or replacement  
181 parts thereon, and supplies and lubricants used exclusively, solely, and directly  
182 for producing crops, raising and feeding livestock, fish, poultry, pheasants,  
183 chukar, quail, or for producing milk for ultimate sale at retail, including field  
184 drain tile, and one-half of each purchaser's purchase of diesel fuel therefor which

185 is:

186 (a) Used exclusively for agricultural purposes;

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

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

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

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

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

217 (c) Each person making domestic use purchases of services or property  
218 and who uses any portion of the services or property so purchased for a  
219 nondomestic use shall, by the fifteenth day of the fourth month following the year  
220 of purchase, and without assessment, notice or demand, file a return and pay



221 sales tax on that portion of nondomestic purchases. Each person making  
222 nondomestic purchases of services or property and who uses any portion of the  
223 services or property so purchased for domestic use, and each person making  
224 domestic purchases on behalf of occupants of residential apartments or  
225 condominiums through a single or master meter, including service for common  
226 areas and facilities and vacant units, under a nonresidential utility service rate  
227 classification may, between the first day of the first month and the fifteenth day  
228 of the fourth month following the year of purchase, apply for credit or refund to  
229 the director of revenue and the director shall give credit or make refund for taxes  
230 paid on the domestic use portion of the purchase. The person making such  
231 purchases on behalf of occupants of residential apartments or condominiums shall  
232 have standing to apply to the director of revenue for such credit or refund;

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

237 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041,  
238 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United  
239 States Code. The director of revenue shall promulgate rules pursuant to chapter  
240 536, RSMo, to eliminate all state and local sales taxes on such excise taxes;

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

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

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

256 (29) All livestock sales when either the seller is engaged in the growing,

257 producing or feeding of such livestock, or the seller is engaged in the business of  
258 buying and selling, bartering or leasing of such livestock;

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

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

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

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

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

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

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

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

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

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

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

312 (39) All purchases by a sports complex authority created under section  
313 64.920, RSMo;

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

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

Section B. Because of the need to ensure the proper application of  
2 Missouri sales tax law with regard to sales for resale, section A of this act is  
3 deemed necessary for the immediate preservation of the public health, welfare,  
4 peace and safety, and is hereby declared to be an emergency act within the  
5 meaning of the constitution, and section A of this act shall be in full force and

6 effect upon its passage and approval.

7

Unofficial

Bill

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