

FIRST REGULAR SESSION

HOUSE BILL NO. 190

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ERVIN (Sponsor), NOLTE, FLOOK,
NANCE AND QUINN (Co-sponsors).

Read 1st time January 11, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0501L.01H

AN ACT

To repeal section 144.030, RSMo, and to enact in lieu thereof one new section relating to material recovery operations.

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Section A. Section 144.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.030, to read as follows: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 sections 144.010 to 144.525 and from the computation of the tax levied, assessed or payable pursuant to sections 144.010 to 144.525 such retail sales as may be made in commerce between this state and any other state of the United States, or between this state and any foreign country, and any retail sale which the state of Missouri is prohibited from taxing pursuant to the Constitution or laws of the United States of America, and such retail sales of tangible personal property which the general assembly of the state of Missouri is prohibited from taxing or further taxing by the constitution of this state.

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

(1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such excise tax is refunded [pursuant to section 142.584, RSMo]; or upon the sale at retail of fuel

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

38 (4) Replacement machinery, equipment, and parts and the materials and supplies solely
39 required for the installation or construction of such replacement machinery, equipment, and
40 parts, used directly in manufacturing, mining, fabricating or producing a product which is
41 intended to be sold ultimately for final use or consumption; and machinery and equipment, and
42 the materials and supplies, **including gases and liquids necessary to effect material recovery**,
43 required solely for the operation, installation or construction of such machinery and equipment,
44 purchased and used to establish new, or to replace or expand existing, material recovery
45 processing plants in this state. For the purposes of this subdivision, a "material recovery
46 processing plant" means a facility which converts recovered materials into a new product, or a
47 different form which is used in producing a new product, and shall include a facility or
48 equipment which is used exclusively for the collection of recovered materials for delivery to a
49 material recovery processing plant but shall not include motor vehicles used on highways. For
50 purposes of this section, the terms "motor vehicle" and "highway" shall have the same meaning
51 pursuant to section 301.010, RSMo;

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

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

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

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

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

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

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

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

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

85 (14) Machinery, equipment, appliances and devices purchased or leased and used solely
86 for the purpose of preventing, abating or monitoring air pollution, and materials and supplies,
87 **including necessary gases, liquids, and solids**, solely required for the installation, construction,

88 **operation**, or reconstruction of such machinery, equipment, appliances and devices, and so
89 certified as such by the director of the department of natural resources, except that any action by
90 the director pursuant to this subdivision may be appealed to the air conservation commission
91 which may uphold or reverse such action;

92 (15) Machinery, equipment, appliances and devices purchased or leased and used solely
93 for the purpose of preventing, abating or monitoring water pollution, and materials and supplies,
94 **including necessary gases, liquids, and solids**, solely required for the installation, construction,
95 **operation**, or reconstruction of such machinery, equipment, appliances and devices, and so
96 certified as such by the director of the department of natural resources, except that any action by
97 the director pursuant to this subdivision may be appealed to the Missouri clean water
98 commission which may uphold or reverse such action;

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

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

106 (18) All sales of insulin and prosthetic or orthopedic devices as defined on January 1,
107 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of
108 1965, including the items specified in Section 1862(a)(12) of that act, and also specifically
109 including hearing aids and hearing aid supplies and all sales of drugs which may be legally
110 dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to
111 administer those items, including samples and materials used to manufacture samples which may
112 be dispensed by a practitioner authorized to dispense such samples and all sales of medical
113 oxygen, home respiratory equipment and accessories, hospital beds and accessories and
114 ambulatory aids, all sales of manual and powered wheelchairs, stairway lifts, Braille writers,
115 electronic Braille equipment and, if purchased by or on behalf of a person with one or more
116 physical or mental disabilities to enable them to function more independently, all sales of
117 scooters, reading machines, electronic print enlargers and magnifiers, electronic alternative and
118 augmentative communication devices, and items used solely to modify motor vehicles to permit
119 the use of such motor vehicles by individuals with disabilities or sales of over-the-counter or
120 nonprescription drugs to individuals with disabilities;

121 (19) All sales made by or to religious and charitable organizations and institutions in
122 their religious, charitable or educational functions and activities and all sales made by or to all
123 elementary and secondary schools operated at public expense in their educational functions and

124 activities;

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

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

141 (22) All sales made to any private not-for-profit elementary or secondary school, all sales
142 of feed additives, medications or vaccines administered to livestock or poultry in the production
143 of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for
144 food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber,
145 all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying
146 agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as
147 defined in section 142.028, RSMo, and all sales of farm machinery and equipment, other than
148 airplanes, motor vehicles and trailers. As used in this subdivision, the term "feed additives"
149 means tangible personal property which, when mixed with feed for livestock or poultry, is to be
150 used in the feeding of livestock or poultry. As used in this subdivision, the term "pesticides"
151 includes adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide
152 carriers used to improve or enhance the effect of a pesticide and the foam used to mark the
153 application of pesticides and herbicides for the production of crops, livestock or poultry. As used
154 in this subdivision, the term "farm machinery and equipment" means new or used farm tractors
155 and such other new or used farm machinery and equipment and repair or replacement parts
156 thereon, and supplies and lubricants used exclusively, solely, and directly for producing crops,
157 raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for
158 ultimate sale at retail and one-half of each purchaser's purchase of diesel fuel therefor which is:

159 (a) Used exclusively for agricultural purposes;

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

161 (c) Used directly in producing farm products to be sold ultimately in processed form or
162 otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold
163 ultimately in processed form at retail;

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

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

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

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

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

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

203 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071,
204 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of
205 revenue shall promulgate rules pursuant to chapter 536, RSMo, to eliminate all state and local
206 sales taxes on such excise taxes;

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

212 (27) All sales made to an interstate compact agency created pursuant to sections 70.370
213 to [70.430] **70.441**, RSMo, or sections 238.010 to 238.100, RSMo, in the exercise of the
214 functions and activities of such agency as provided pursuant to the compact;

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

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

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

224 (31) Electrical energy or gas, whether natural, artificial or propane, **or other utilities**
225 which [is] **are** ultimately consumed in connection with the manufacturing of cellular glass
226 products **or any material recovery product which requires such energy or utility to effect**
227 **its conversion to a product ultimately subject to sales or use tax under this chapter**;

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

230 (33) Tangible personal property purchased for use or consumption directly or exclusively
231 in the research and development of prescription pharmaceuticals consumed by humans or

232 animals;

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

234 (35) All sales of feed which are developed for and used in the feeding of pets owned by
235 a commercial breeder when such sales are made to a commercial breeder, as defined in section
236 273.325, RSMo, and licensed pursuant to sections 273.325 to 273.357, RSMo;

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

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

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

256 (37) Tangible personal property purchased for use or consumption directly or exclusively
257 in research or experimentation activities performed by life science companies and so certified
258 as such by the director of the department of economic development or the director's designees;
259 except that, the total amount of exemptions certified pursuant to this section shall not exceed one
260 million three hundred thousand dollars in state and local taxes per fiscal year. For purposes of
261 this subdivision, the term "life science companies" means companies whose primary research
262 activities are in agriculture, pharmaceuticals, biomedical or food ingredients, and whose North
263 American Industry Classification System (NAICS) Codes fall under industry 541710 (biotech
264 research or development laboratories), 621511 (medical laboratories) or 541940 (veterinary
265 services). The exemption provided by this subdivision shall expire on June 30, 2003;

266 (38) All sales or other transfers of tangible personal property to a lessor[,] who leases
267 the property under a lease of one year or longer executed or in effect at the time of the sale or

268 other transfer[,] to an interstate compact agency created pursuant to sections 70.370 to [70.430]
269 **70.441**, RSMo, or sections 238.010 to 238.100, RSMo.

270 **3. When an entity performs actual manufacturing functions or material recovery**
271 **functions on or for a product which is ultimately subject to sales or use tax under this**
272 **chapter, but does so under a contract, fee, or tolling arrangement without owning the**
273 **product, the entity performing the function shall be eligible for the applicable exemptions**
274 **allowed in this section.**