

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1249

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SPRENG (Sponsor), RICHARD, JETTON, BEARDEN, DEMPSEY, KRATKY, VOGT, VILLA, DARROUGH, PORTWOOD, YOUNG, PAGE, SATER, CORCORAN, BOWMAN, LOWE (44), PEARCE, HUBBARD, DAUS, LIESE, WAGNER, SCHNEIDER, WILDBERGER, MCGHEE AND HARRIS (23) (Co-sponsors).

Read 1st time January 5, 2006 and copies ordered printed.

Read 2nd time January 9, 2006 and referred to the Committee on Job Creation and Economic Development January 26, 2006.

Reported from the Committee on Job Creation and Economic Development February 13, 2006 with recommendation that the bill Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules February 15, 2006 with recommendation that the bill Do Pass.

Taken up for Perfection February 27, 2006. Bill ordered Perfected and printed.

STEPHEN S. DAVIS, Chief Clerk

3762L.01P

AN ACT

To repeal section 144.030, RSMo, and to enact in lieu thereof two new sections relating to sales and use tax exemptions.

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Section A. Section 144.030, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 144.030 and 144.051, to read as follows: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

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.

7 general assembly of the state of Missouri is prohibited from taxing or further taxing by the
8 constitution of this state.

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

14 (1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of
15 such excise tax is refunded pursuant to section 142.824, RSMo; or upon the sale at retail of fuel
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 required solely for the operation, installation or construction of such

43 machinery and equipment, purchased and used to establish new, or to replace or expand existing,
44 material recovery processing plants in this state. For the purposes of this subdivision, a "material
45 recovery processing plant" means a facility that has as its primary purpose the recovery of
46 materials into a useable product or a different form which is used in producing a new product and
47 shall include a facility or equipment which are used exclusively for the collection of recovered
48 materials for delivery to a material recovery processing plant but shall not include motor vehicles
49 used on highways. For purposes of this section, the terms "motor vehicle" and "highway" shall
50 have the same meaning pursuant to section 301.010, RSMo. Material recovery is not the reuse
51 of materials within a manufacturing process or the use of a product previously recovered. The
52 material recovery processing plant shall qualify under the provisions of this section regardless
53 of ownership of the material being recovered;

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

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

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

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

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

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

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

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

79 exclusive of the cost of electrical energy so used or if the raw materials used in such processing
80 contain at least twenty-five percent recovered materials as defined in section 260.200, RSMo.
81 **There shall be a rebuttable presumption that the raw materials used in the primary**
82 **manufacture of automobiles contain at least twenty-five percent recovered materials.** For
83 purposes of this subdivision, "processing" means any mode of treatment, act or series of acts
84 performed upon materials to transform and reduce them to a different state or thing, including
85 treatment necessary to maintain or preserve such processing by the producer at the production
86 facility;

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

89 (14) Machinery, equipment, appliances and devices purchased or leased and used solely
90 for the purpose of preventing, abating or monitoring air pollution, and materials and supplies
91 solely required for the installation, construction or reconstruction of such machinery, equipment,
92 appliances and devices, and so certified as such by the director of the department of natural
93 resources, except that any action by the director pursuant to this subdivision may be appealed to
94 the air conservation commission which may uphold or reverse such action;

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

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

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

108 (18) All sales of insulin and prosthetic or orthopedic devices as defined on January 1,
109 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of
110 1965, including the items specified in Section 1862(a)(12) of that act, and also specifically
111 including hearing aids and hearing aid supplies and all sales of drugs which may be legally
112 dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to
113 administer those items, including samples and materials used to manufacture samples which may
114 be dispensed by a practitioner authorized to dispense such samples and all sales of medical

115 oxygen, home respiratory equipment and accessories, hospital beds and accessories and
116 ambulatory aids, all sales of manual and powered wheelchairs, stairway lifts, Braille writers,
117 electronic Braille equipment and, if purchased by or on behalf of a person with one or more
118 physical or mental disabilities to enable them to function more independently, all sales of
119 scooters, reading machines, electronic print enlargers and magnifiers, electronic alternative and
120 augmentative communication devices, and items used solely to modify motor vehicles to permit
121 the use of such motor vehicles by individuals with disabilities or sales of over-the-counter or
122 nonprescription drugs to individuals with disabilities;

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

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

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

143 (22) All sales made to any private not-for-profit elementary or secondary school, all sales
144 of feed additives, medications or vaccines administered to livestock or poultry in the production
145 of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for
146 food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber,
147 all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying
148 agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as
149 defined in section 142.028, RSMo, natural gas, propane, and electricity used by an eligible new
150 generation cooperative or an eligible new generation processing entity as defined in section

348.432, RSMo, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and trailers. As used in this subdivision, the term "feed additives" means tangible personal property which, when mixed with feed for livestock or poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark the application of pesticides and herbicides for the production of crops, livestock or poultry. As used in this subdivision, the term "farm machinery and equipment" means new or used farm tractors and such other new or used farm machinery and equipment and repair or replacement parts thereon, and supplies and lubricants used exclusively, solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale at retail, including field drain tile, and one-half of each purchaser's purchase of diesel fuel therefor which is:

- (a) Used exclusively for agricultural purposes;
- (b) Used on land owned or leased for the purpose of producing farm products; and
- (c) Used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail;

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

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

(b) Regulated utility sellers shall determine whether individual purchases are exempt or nonexempt based upon the seller's utility service rate classifications as contained in tariffs on file with and approved by the Missouri public service commission. Sales and purchases made pursuant to the rate classification "residential" and sales to and purchases made by or on behalf of the occupants of residential apartments or condominiums through a single or master meter, including service for common areas and facilities and vacant units, shall be considered as sales

187 made for domestic use and such sales shall be exempt from sales tax. Sellers shall charge sales
188 tax upon the entire amount of purchases classified as nondomestic use. The seller's utility
189 service rate classification and the provision of service thereunder shall be conclusive as to
190 whether or not the utility must charge sales tax;

191 (c) Each person making domestic use purchases of services or property and who uses any
192 portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day
193 of the fourth month following the year of purchase, and without assessment, notice or demand,
194 file a return and pay sales tax on that portion of nondomestic purchases. Each person making
195 nondomestic purchases of services or property and who uses any portion of the services or
196 property so purchased for domestic use, and each person making domestic purchases on behalf
197 of occupants of residential apartments or condominiums through a single or master meter,
198 including service for common areas and facilities and vacant units, under a nonresidential utility
199 service rate classification may, between the first day of the first month and the fifteenth day of
200 the fourth month following the year of purchase, apply for credit or refund to the director of
201 revenue and the director shall give credit or make refund for taxes paid on the domestic use
202 portion of the purchase. The person making such purchases on behalf of occupants of residential
203 apartments or condominiums shall have standing to apply to the director of revenue for such
204 credit or refund;

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

208 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071,
209 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of
210 revenue shall promulgate rules pursuant to chapter 536, RSMo, to eliminate all state and local
211 sales taxes on such excise taxes;

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

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

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

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

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

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

229 (31) Electrical energy or gas, whether natural, artificial or propane, water, or other
230 utilities which are ultimately consumed in connection with the manufacturing of cellular glass
231 products or in any material recovery processing plant as defined in subdivision (4) of subsection
232 2 of this section;

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

235 (33) Tangible personal property purchased for use or consumption directly or exclusively
236 in the research and development of prescription pharmaceuticals consumed by humans or
237 animals;

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

239 (35) All sales of feed which are developed for and used in the feeding of pets owned by
240 a commercial breeder when such sales are made to a commercial breeder, as defined in section
241 273.325, RSMo, and licensed pursuant to sections 273.325 to 273.357, RSMo;

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

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

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

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

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

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

144.051. In addition to the exemptions granted in section 144.030, there is hereby specifically exempted from the provisions of any state tax levied and imposed in this chapter all sales of new motor vehicles assembled and sold in the state of Missouri on or after January 1, 2007. For purposes of this section, "motor vehicle" means any self-propelled vehicle not operated exclusively upon tracks, except farm tractors. This section shall not be construed to prohibit the levy of any local sales tax, as defined in section 32.085, RSMo, on any sales of new motor vehicles assembled and sold in the state on or after January 1, 2007. In the event that any political subdivision has enacted a local sales tax on such sales, the political subdivision may, by order or ordinance, exempt such sales from the local sales tax law.

Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if

14 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
15 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
16 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
17 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
18 adopted after August 28, 2006, shall be invalid and void.

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