

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 768**  
**94TH GENERAL ASSEMBLY**

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Reported from the Committee on Transportation March 8, 2007 with recommendation that House Committee Substitute for House Bill No. 768 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

1489L.02C

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**AN ACT**

To repeal section 144.062, RSMo, and to enact in lieu thereof four new sections relating to tax exemptions.

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

Section A. Section 144.062, RSMo, is repealed and four new sections enacted in lieu thereof, to be known as sections 142.814, 142.817, 144.062, and 1, to read as follows:

**142.814. 1. Motor fuel sold to be used to operate school buses to transport students to or from school or to transport students to or from any place for educational purposes is exempt from the fuel tax imposed by this chapter. As used in this section, "school buses" shall have the same meaning as in subdivision (19) of section 302.010, RSMo.**

**2. The department shall promulgate rules to implement the provisions of this section. 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 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.**

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.

**142.817. Motor fuel sold to be used to operate public mass transportation service**  
2 **by a city transit authority, a city utilities board, or an interstate transportation authority,**  
3 **as such terms are defined in section 94.600, RSMo, a city, or an agency receiving funding**  
4 **from either the Federal Transit Administration's urban or nonurban formula transit**  
5 **programs is exempt from the fuel tax imposed by this chapter. The department shall**  
6 **promulgate rules to implement the provisions of this section. Any rule or portion of a rule,**  
7 **as that term is defined in section 536.010, RSMo, that is created under the authority**  
8 **delegated in this section shall become effective only if it complies with and is subject to all**  
9 **of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This**  
10 **section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the**  
11 **general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or**  
12 **to disapprove and annul a rule are subsequently held unconstitutional, then the grant of**  
13 **rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be**  
14 **invalid and void.**

144.062. 1. With respect to exempt sales at retail of tangible personal property and  
2 materials for the purpose of constructing, repairing or remodeling facilities for:  
3 (1) A county, other political subdivision or instrumentality thereof exempt from taxation  
4 under subdivision (10) of section 39 of article III of the Constitution of Missouri; or  
5 (2) An organization sales to which are exempt from taxation under the provisions of  
6 subdivision (19) of subsection 2 of section 144.030; or  
7 (3) Any institution of higher education supported by public funds or any private  
8 not-for-profit institution of higher education, exempt from taxation under subdivision (20) of  
9 subsection 2 of section 144.030; or  
10 (4) Any private not-for-profit elementary or secondary school exempt from taxation  
11 under subdivision (22) of subsection 2 of section 144.030; or  
12 **(5) After June 30, 2008, the department of transportation or the state highways and**  
13 **transportation commission,** hereinafter collectively referred to as exempt entities, such  
14 exemptions shall be allowed for such purchases if the purchases are related to the entities'  
15 exempt functions and activities. In addition, the sales shall not be rendered nonexempt nor shall  
16 any material supplier or contractor be obligated to pay, collect or remit sales tax with respect to  
17 such purchases made by or on behalf of an exempt entity due to such purchases being billed to  
18 or paid for by a contractor or the exempt entity contracting with any entity to render any services  
19 in relation to such purchases, including but not limited to selection of materials, ordering, pickup,  
20 delivery, approval on delivery, taking of delivery, transportation, storage, assumption of risk of  
21 loss to materials or providing warranties on materials as specified by contract, use of materials  
22 or other purchases for construction of the building or other facility, providing labor, management

23 services, administrative services, design or technical services or advice to the exempt entity,  
24 whether or not the contractor or other entity exercises dominion or control in any other manner  
25 over the materials in conjunction with services or labor provided to the exempt entity.

26         2. When any exempt entity contracts for the purpose of constructing, repairing or  
27 remodeling facilities, and purchases of tangible personal property and materials to be  
28 incorporated into or consumed in the construction of the project are to be made on a tax-exempt  
29 basis, such entity shall furnish to the contractor an exemption certificate authorizing such  
30 purchases for the construction, repair or remodeling project. The form and content of such  
31 project exemption certificate shall be approved by the director of revenue. The project  
32 exemption certificate shall include but not be limited to:

33             (1) The exempt entity's name, address, Missouri tax identification number and signature  
34 of authorized representative;

35             (2) The project location, description, and unique identification number;

36             (3) The date the contract is entered into, which is the earliest date materials may be  
37 purchased for the project on a tax-exempt basis;

38             (4) The estimated project completion date; and

39             (5) The certificate expiration date.

40 Such certificate is renewable for a given project at the option of the exempt entity, only for the  
41 purpose of revising the certificate expiration date as necessary to complete the project.

42         3. The contractor shall furnish the certificate prescribed in subsection 2 of this section  
43 to all subcontractors, and any contractor purchasing materials shall present such certificate to all  
44 material suppliers as authorization to purchase, on behalf of the exempt entity, all tangible  
45 personal property and materials to be incorporated into or consumed in the construction of that  
46 project and no other on a tax-exempt basis. Such suppliers shall execute to the purchasing  
47 contractor invoices bearing the name of the exempt entity and the project identification number.  
48 Nothing in this section shall be deemed to exempt the purchase of any construction machinery,  
49 equipment or tools used in constructing, repairing or remodeling facilities for the exempt entity.  
50 All invoices for all personal property and materials purchased under a project exemption  
51 certificate shall be retained by the purchasing contractor for a period of five years and shall be  
52 subject to audit by the director of revenue.

53         4. Any excess resalable tangible personal property or materials which were purchased  
54 for the project by a contractor under a project exemption certificate but which were not  
55 incorporated into or consumed in the construction of the project shall either be returned to the  
56 supplier for credit or the appropriate sales or use tax on such excess property or materials shall  
57 be reported on a return and paid by such contractor not later than the due date of the contractor's

58 Missouri sales or use tax return following the month in which it was determined that the  
59 materials were not to be used in the project.

60         5. No contractor or material supplier shall, upon audit, be required to pay tax on tangible  
61 personal property and materials incorporated into or consumed in the construction of the project,  
62 due to the failure of the exempt entity to revise the certificate expiration date as necessary to  
63 complete any work required by the contract. If it is determined that tax is owed on such property  
64 and materials due to the failure of the exempt entity to revise such certificate expiration date, the  
65 exempt entity shall be liable for the tax owed.

66         6. If an entity issues exemption certificates for the purchase of tangible personal property  
67 and materials which are incorporated into or consumed in the construction of its project and such  
68 entity is found not to have had the authority granted by this section to issue such exemption  
69 certificates, then such entity shall be liable for the tax owed on such personal property and  
70 materials. In addition, if an entity which does have the authority granted by this section to issue  
71 exemption certificates issues such certificates for the purchase of tangible personal property and  
72 materials which are incorporated into or consumed in the construction of a project, or part of a  
73 project, which is found not to be related to such entity's exempt functions and activities, then  
74 such entity shall be liable for the tax owed on such personal property and materials.

**Section 1. 1. Notwithstanding any rule or law to the contrary, the department of**  
2 **revenue shall promulgate a uniform and simplified rule for all motor fuel tax exemptions.**  
3 **This uniform and simplified rule shall preempt all similar existing rules, shall minimize,**  
4 **if applicable, the time between requesting a refund and receiving a refund, and shall**  
5 **ensure that any document and administrative burdens be kept to a minimum and be**  
6 **shared equitably by the fuel wholesaler or fuel retailer and the tax exempt entity.**

7         **2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**  
8 **that is created under the authority delegated in this section shall become effective only if**  
9 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**  
10 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**  
11 **and if any of the powers vested with the general assembly under chapter 536, RSMo, to**  
12 **review, to delay the effective date, or to disapprove and annul a rule are subsequently held**  
13 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**  
14 **after August 28, 2007, shall be invalid and void.**

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