

FIRST REGULAR SESSION

HOUSE BILL NO. 1089

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES STEVENSON (Sponsor), RUESTMAN, RICHARD,
WILSON (130) AND HUNTER (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

2596L.02I

AN ACT

To repeal sections 144.030, 144.605, and 147.010, RSMo, and to enact in lieu thereof four new sections relating to determinations of nexus for taxation purposes.

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

Section A. Sections 144.030, 144.605, and 147.010, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 143.006, 144.030, 144.605, and
3 147.010, to read as follows:

143.006. Notwithstanding any other provision of this chapter to the contrary,
2 **whether a corporation or an individual has a substantial nexus with this state for income**
3 **tax purposes shall be determined without regard to whether the corporation or individual:**

4 **(1) Owns or uses a distribution facility within this state;**

5 **(2) Owns or leases property at a distribution facility within this state that is used**
6 **at, or distributed from, that facility;**

7 **(3) Sells property shipped or distributed from a distribution facility within this**
8 **state;**

9 **(4) Owns or uses a data storage facility within this state;**

10 **(5) Owns or leases property at a data storage facility within this state where data**
11 **is stored, manipulated, or processed from that facility; or**

12 **(6) Sells information that was stored, manipulated, or processed from a data**
13 **storage facility within this state.**

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.

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 144.761 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 142.824, RSMo; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing water to be sold ultimately at retail; or feed for livestock or poultry; or grain to be converted into foodstuffs which are to be sold ultimately in processed form at retail; or seed, limestone or fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested will be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at retail; economic poisons registered pursuant to the provisions of the Missouri pesticide registration law (sections 281.220 to 281.310, RSMo) which are to be used in connection with the growth or production of crops, fruit trees or orchards applied before, during, or after planting, the crop of which when harvested will be sold at retail or will be converted into foodstuffs which are to be sold ultimately in processed form at retail;

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

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

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

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

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

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

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

(17) All amounts paid or charged for admission or participation or other fees paid by or other charges to individuals in or for any place of amusement, entertainment or recreation, games or athletic events, including museums, fairs, zoos and planetariums, owned or operated by a municipality or other political subdivision where all the proceeds derived therefrom benefit the municipality or other political subdivision and do not inure to any private person, firm, or 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, in their civic or
129 charitable functions and activities and all sales made to eleemosynary and penal institutions and
130 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;

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

177 Each seller shall establish and maintain a system whereby individual purchases are determined
178 as exempt or nonexempt;

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

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

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

206 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071,
207 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of
208 revenue shall promulgate rules pursuant to chapter 536, RSMo, to eliminate all state and local
209 sales taxes on such excise taxes;

210 (26) Sales of fuel consumed or used in the operation of ships, barges, or waterborne
211 vessels which are used primarily in or for the transportation of property or cargo, or the
212 conveyance of persons for hire, on navigable rivers bordering on or located in part in this state,

213 if such fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while
214 it is afloat upon such river;

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

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

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

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

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

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

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

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

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

240 (36) All purchases by a contractor on behalf of an entity located in another state,
241 provided that the entity is authorized to issue a certificate of exemption for purchases to a
242 contractor under the provisions of that state's laws. For purposes of this subdivision, the term
243 "certificate of exemption" shall mean any document evidencing that the entity is exempt from
244 sales and use taxes on purchases pursuant to the laws of the state in which the entity is located.
245 Any contractor making purchases on behalf of such entity shall maintain a copy of the entity's
246 exemption certificate as evidence of the exemption. If the exemption certificate issued by the
247 exempt entity to the contractor is later determined by the director of revenue to be invalid for any
248 reason and the contractor has accepted the certificate in good faith, neither the contractor or the

249 exempt entity shall be liable for the payment of any taxes, interest and penalty due as the result
250 of use of the invalid exemption certificate. Materials shall be exempt from all state and local
251 sales and use taxes when purchased by a contractor for the purpose of fabricating tangible
252 personal property which is used in fulfilling a contract for the purpose of constructing, repairing
253 or remodeling facilities for the following:

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

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

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

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

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

144.605. The following words and phrases as used in sections 144.600 to 144.745 mean
2 and include:

3 (1) "Calendar quarter", the period of three consecutive calendar months ending on March
4 thirty-first, June thirtieth, September thirtieth or December thirty-first;

5 (2) "Engages in business activities within this state" includes:

- 6 (a) [Purposefully or systematically exploiting the market provided by this state by any
7 media-assisted, media-facilitated, or media-solicited means, including, but not limited to, direct
8 mail advertising, distribution of catalogs, computer-assisted shopping, telephone, television,
9 radio, or other electronic media, or magazine or newspaper advertisements, or other media; or
10 (b) Being owned or controlled by the same interests which own or control any seller
11 engaged in the same or similar line of business in this state; or
12 (c)] Maintaining or having a franchisee or licensee operating under the seller's trade
13 name in this state if the franchisee or licensee is required to collect sales tax pursuant to sections
14 144.010 to 144.525; or
15 [(d)] (b) Soliciting sales or taking orders by sales agents or traveling representatives **in**
16 **this state.**

17

18 **Notwithstanding any other provision of this chapter to the contrary, whether a person**
19 **engages in business activities within this state and whether the person has a substantial**
20 **nexus with this state shall be determined without regard to whether the person:**

- 21 **a. Owns or uses a distribution facility within this state;**
22 **b. Owns or leases property at a distribution facility within this state that is used at,**
23 **or distributed from, that facility;**
24 **c. Sells property shipped or distributed from a distribution facility within this state;**
25 **d. Owns or uses a data storage facility within this state;**
26 **e. Owns or leases property at a data storage facility within this state where data is**
27 **stored, manipulated, or processed from that facility; or**
28 **f. Sells information that was stored, manipulated, or processed from a data storage**
29 **facility within this state;**

30 (3) "Maintains a place of business in this state" includes **directly** maintaining,
31 occupying, or using[, permanently or temporarily, directly or indirectly, or through a subsidiary,
32 or agent, by whatever name called,] an office, [place of distribution, sales or sample room or
33 place,] warehouse or storage place, or other place of business **in this state other than a**
34 **distribution facility or a data storage facility;**

35 (4) "Person", any individual, firm, copartnership, joint venture, association, corporation,
36 municipal or private, and whether organized for profit or not, state, county, political subdivision,
37 state department, commission, board, bureau or agency, except the state transportation
38 department, estate, trust, business trust, receiver or trustee appointed by the state or federal court,
39 syndicate, or any other group or combination acting as a unit, and the plural as well as the
40 singular number;

41 (5) "Purchase", the acquisition of the ownership of, or title to, tangible personal property,
42 through a sale, as defined herein, for the purpose of storage, use or consumption in this state;

43 (6) "Purchaser", any person who is the recipient for a valuable consideration of any sale
44 of tangible personal property acquired for use, storage or consumption in this state;

45 (7) "Sale", any transfer, barter or exchange of the title or ownership of tangible personal
46 property, or the right to use, store or consume the same, for a consideration paid or to be paid,
47 and any transaction whether called leases, rentals, bailments, loans, conditional sales or
48 otherwise, and notwithstanding that the title or possession of the property or both is retained for
49 security. For the purpose of this law the place of delivery of the property to the purchaser, user,
50 storer or consumer is deemed to be the place of sale, whether the delivery be by the vendor or
51 by common carriers, private contractors, mails, express, agents, salesmen, solicitors, hawkers,
52 representatives, consignors, peddlers, canvassers or otherwise;

53 (8) "Sales price", the consideration including the charges for services, except charges
54 incident to the extension of credit, paid or given, or contracted to be paid or given, by the
55 purchaser to the vendor for the tangible personal property, including any services that are a part
56 of the sale, valued in money, whether paid in money or otherwise, and any amount for which
57 credit is given to the purchaser by the vendor, without any deduction therefrom on account of the
58 cost of the property sold, the cost of materials used, labor or service cost, losses or any other
59 expenses whatsoever, except that cash discounts allowed and taken on sales shall not be included
60 and "sales price" shall not include the amount charged for property returned by customers upon
61 rescission of the contract of sales when the entire amount charged therefor is refunded either in
62 cash or credit or the amount charged for labor or services rendered in installing or applying the
63 property sold, the use, storage or consumption of which is taxable pursuant to sections 144.600
64 to 144.745. In determining the amount of tax due pursuant to sections 144.600 to 144.745, any
65 charge incident to the extension of credit shall be specifically exempted;

66 (9) "Selling agent", every person acting as a representative of a principal, when such
67 principal is not registered with the director of revenue of the state of Missouri for the collection
68 of the taxes imposed pursuant to sections 144.010 to 144.525 or sections 144.600 to 144.745 and
69 who receives compensation by reason of the sale of tangible personal property of the principal,
70 if such property is to be stored, used, or consumed in this state;

71 (10) "Storage", any keeping or retention in this state of tangible personal property
72 purchased from a vendor, except property for sale or property that is temporarily kept or retained
73 in this state for subsequent use outside the state;

74 (11) "Tangible personal property", all items subject to the Missouri sales tax as provided
75 in subdivisions (1) and (3) of section 144.020;

76 (12) "Taxpayer", any person remitting the tax or who should remit the tax levied by
77 sections 144.600 to 144.745;

78 (13) "Use", the exercise of any right or power over tangible personal property incident
79 to the ownership or control of that property, except that it does not include the temporary storage
80 of property in this state for subsequent use outside the state, or the sale of the property in the
81 regular course of business;

82 (14) "Vendor", every person engaged in making sales of tangible personal property by
83 mail order, by advertising, by agent or peddling tangible personal property, soliciting or taking
84 orders for sales of tangible personal property, for storage, use or consumption in this state, all
85 salesmen, solicitors, hawkers, representatives, consignees, peddlers or canvassers, as agents of
86 the dealers, distributors, consignors, supervisors, principals or employers under whom they
87 operate or from whom they obtain the tangible personal property sold by them, and every person
88 who maintains a place of business in this state, maintains a stock of goods in this state, or
89 engages in business activities within this state and every person who engages in this state in the
90 business of acting as a selling agent for persons not otherwise vendors as defined in this
91 subdivision. Irrespective of whether they are making sales on their own behalf or on behalf of
92 the dealers, distributors, consignors, supervisors, principals or employers, they must be regarded
93 as vendors and the dealers, distributors, consignors, supervisors, principals or employers must
94 be regarded as vendors for the purposes of sections 144.600 to 144.745. A person shall not be
95 considered a vendor for the purposes of sections 144.600 to 144.745 if all of the following apply:

96 (a) The person's total gross receipts did not exceed five hundred thousand dollars in this
97 state, or twelve and one-half million dollars in the entire United States, in the immediately
98 preceding calendar year;

99 (b) The person maintains no place of business in this state; and

100 (c) The person has no selling agents in this state.

147.010. 1. For the transitional year defined in subsection 4 of this section and each
2 taxable year beginning on or after January 1, 1980, but before January 1, 2000, every corporation
3 organized pursuant to or subject to chapter 351, RSMo, or pursuant to any other law of this state
4 shall, in addition to all other fees and taxes now required or paid, pay an annual franchise tax to
5 the state of Missouri equal to one-twentieth of one percent of the par value of its outstanding
6 shares and surplus if its outstanding shares and surplus exceed two hundred thousand dollars, or
7 if the outstanding shares of such corporation or any part thereof consist of shares without par
8 value, then, in that event, for the purpose contained in this section, such shares shall be
9 considered as having a value of five dollars per share unless the actual value of such shares
10 exceeds five dollars per share, in which case the tax shall be levied and collected on the actual
11 value and the surplus if the actual value and the surplus exceed two hundred thousand dollars.

12 If such corporation employs a part of its outstanding shares in business in another state or
13 country, then such corporation shall pay an annual franchise tax equal to one-twentieth of one
14 percent of its outstanding shares and surplus employed in this state if its outstanding shares and
15 surplus employed in this state **exceed** two hundred thousand dollars, and for the purposes of
16 sections 147.010 to 147.120, such corporation shall be deemed to have employed in this state
17 that proportion of its entire outstanding shares and surplus that its property and assets employed
18 in this state bears to all its property and assets wherever located. A foreign corporation engaged
19 in business in this state, whether pursuant to a certificate of authority issued pursuant to chapter
20 351, RSMo, or not, shall be subject to this section. Any corporation whose outstanding shares
21 and surplus as calculated in this subsection does not exceed two hundred thousand dollars shall
22 state that fact on the annual report form prescribed by the secretary of state. For all taxable years
23 beginning on or after January 1, 2000, the annual franchise tax shall be equal to one-thirtieth of
24 one percent of the corporation's outstanding shares and surplus if the outstanding shares and
25 surplus exceed one million dollars. Any corporation whose outstanding shares and surplus do
26 not exceed one million dollars shall state that fact on the annual report form prescribed by the
27 director of revenue.

28 2. Sections 147.010 to 147.120 shall not apply to corporations not organized for profit,
29 nor to corporations organized pursuant to the provisions of chapter 349, RSMo, nor to express
30 companies, which now pay an annual tax on their gross receipts in this state, nor to insurance
31 companies, which pay an annual tax on their premium receipts in this state, nor to state, district,
32 county, town and farmers' mutual companies now organized or that may be hereafter organized
33 pursuant to any of the laws of this state, organized for the sole purpose of writing fire, lightning,
34 windstorm, tornado, cyclone, hail and plate glass and mutual automobile insurance and for the
35 purpose of paying any loss incurred by any member by assessment, nor to any mutual insurance
36 corporation not having shares, nor to a company or association organized to transact business of
37 life or accident insurance on the assessment plan for the purpose of mutual protection and benefit
38 to its members and the payment of stipulated sums of moneys to the family, heirs, executors,
39 administrators or assigns of the deceased member, nor to foreign life, fire, accident, surety,
40 liability, steam boiler, tornado, health, or other kind of insurance company of whatever nature
41 coming within the provisions of section 147.050 and doing business in this state, nor to savings
42 and loan associations and domestic and foreign regulated investment companies as defined by
43 Section 170 of the Act of Congress commonly known as the "Revenue Act of 1942", nor to
44 electric and telephone corporations organized pursuant to chapter 351, RSMo, and chapter 392,
45 RSMo, prior to January 1, 1980, which have been declared tax exempt organizations pursuant
46 to Section 501(c) of the Internal Revenue Code of 1986, nor for taxable years beginning after
47 December 31, 1986, to banking institutions subject to the annual franchise tax imposed by

48 sections 148.010 to 148.110, RSMo; but bank deposits shall be considered as funds of the
49 individual depositor left for safekeeping and shall not be considered in computing the amount
50 of tax collectible pursuant to the provisions of sections 147.010 to 147.120.

51 3. A corporation's "taxable year" for purposes of sections 147.010 to 147.120 shall be
52 its taxable year as provided in section 143.271, RSMo.

53 4. A corporation's "transitional year" for the purposes of sections 147.010 to 147.120
54 shall be its taxable year which includes parts of each of the years 1979 and 1980.

55 5. The franchise tax payable for a corporation's transitional year shall be computed by
56 multiplying the amount otherwise due for that year by a fraction, the numerator of which is the
57 number of months between January 1, 1980, and the end of the taxable year and the denominator
58 of which is twelve. The franchise tax payable, if a corporation's taxable year is changed as
59 provided in section 143.271, RSMo, shall be similarly computed pursuant to regulations
60 prescribed by the director of revenue.

61 6. All franchise reports and franchise taxes shall be returned to the director of revenue.
62 All checks and drafts remitted for payment of franchise taxes shall be made payable to the
63 director of revenue.

64 7. Pursuant to section 32.057, RSMo, the director of revenue shall maintain the
65 confidentiality of all franchise tax reports returned to the director.

66 8. The director of the department of revenue shall honor all existing agreements between
67 taxpayers and the director of the department of revenue.

68 **9. Notwithstanding any other provision of this chapter to the contrary, whether a**
69 **corporation has a substantial nexus with this state for franchise tax purposes shall be**
70 **determined without regard to whether the corporation:**

71 **(1) Owns or uses a distribution facility within this state;**

72 **(2) Owns or leases property at a distribution facility within this state that is used**
73 **at, or distributed from, that facility;**

74 **(3) Sells property shipped or distributed from a distribution facility within this**
75 **state;**

76 **(4) Owns or uses a data storage facility within this state;**

77 **(5) Owns or leases property at a data storage facility within this state where data**
78 **is stored, manipulated, or processed from that facility; or**

79 **(6) Sells information that was stored, manipulated, or processed from a data**
80 **storage facility within this state.**

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