

SECOND REGULAR SESSION

# HOUSE BILL NO. 1363

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CUNNINGHAM (145).

Pre-filed December 5, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

3701L.01I

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### AN ACT

To repeal section 144.030, RSMo, and to enact in lieu thereof one new section relating to exemptions from sales and use taxes.

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

Section A. Section 144.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.030, to read as follows: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 144.761 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

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 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 have  
50 the same meaning pursuant to section 301.010, RSMo. Material recovery is not the reuse of  
51 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, in the  
73 transportation of persons or property;

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 manufacture  
82 of automobiles contain at least twenty-five percent recovered materials. For purposes of this  
83 subdivision, "processing" means any mode of treatment, act or series of acts performed upon  
84 materials to transform and reduce them to a different state or thing, including treatment necessary  
85 to maintain or preserve such processing by the producer at the production facility;

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

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

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

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

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

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

122           (19) All sales made by or to religious and charitable organizations and institutions in  
123 their religious, charitable or educational functions and activities and all sales made by or to all

124 elementary and secondary schools operated at public expense in their educational functions and  
125 activities;

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

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

142 (22) All sales made to any private not-for-profit elementary or secondary school, all sales  
143 of feed additives, medications or vaccines administered to livestock or poultry in the production  
144 of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for  
145 food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber,  
146 all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying  
147 agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as  
148 defined in section 142.028, RSMo, natural gas, propane, and electricity used by an eligible new  
149 generation cooperative or an eligible new generation processing entity as defined in section  
150 348.432, RSMo, and all sales of farm machinery and equipment, other than airplanes, motor  
151 vehicles and trailers. As used in this subdivision, the term "feed additives" means tangible  
152 personal property which, when mixed with feed for livestock or poultry, is to be used in the  
153 feeding of livestock or poultry. As used in this subdivision, the term "pesticides" includes  
154 adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide carriers used  
155 to improve or enhance the effect of a pesticide and the foam used to mark the application of  
156 pesticides and herbicides for the production of crops, livestock or poultry. As used in this  
157 subdivision, the term "farm machinery and equipment" means new or used farm tractors and such  
158 other new or used farm machinery and equipment and repair or replacement parts thereon, and  
159 supplies and lubricants used exclusively, solely, and directly for producing crops, raising and

160 feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale  
161 at retail, including field drain tile, and [one-half of each purchaser's] **the** purchase of [diesel]  
162 **motor fuel, as defined in section 142.800, RSMo,** therefor which is:

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

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

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

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

190 (c) Each person making domestic use purchases of services or property and who uses any  
191 portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day  
192 of the fourth month following the year of purchase, and without assessment, notice or demand,  
193 file a return and pay sales tax on that portion of nondomestic purchases. Each person making  
194 nondomestic purchases of services or property and who uses any portion of the services or  
195 property so purchased for domestic use, and each person making domestic purchases on behalf

196 of occupants of residential apartments or condominiums through a single or master meter,  
197 including service for common areas and facilities and vacant units, under a nonresidential utility  
198 service rate classification may, between the first day of the first month and the fifteenth day of  
199 the fourth month following the year of purchase, apply for credit or refund to the director of  
200 revenue and the director shall give credit or make refund for taxes paid on the domestic use  
201 portion of the purchase. The person making such purchases on behalf of occupants of residential  
202 apartments or condominiums shall have standing to apply to the director of revenue for such  
203 credit or refund;

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) An exempt entity located in this state, if the entity is one of those entities able to issue 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) 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;

(38) 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

268 outside the state of Missouri. For purposes of this subdivision, "neutral site" means any site that  
269 is not located on the campus of a conference member institution participating in the event;

270 (39) All purchases by a sports complex authority created under section 64.920, RSMo.

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