

SECOND REGULAR SESSION

# HOUSE BILL NO. 1179

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BURLISON (Sponsor), BERRY, DIEHL, NETH, HOSKINS,  
ELMER, AUSTIN, ANDERSON, CRAWFORD, KELLEY (127),  
FITZPATRICK AND ROWDEN (Co-sponsors).

4635L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 144.010, 144.018, and 144.020, RSMo, and to enact in lieu thereof three new sections relating to sales taxes on places of amusement, entertainment, recreation, games, and athletic events.

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

Section A. Sections 144.010, 144.018, and 144.020, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 144.010, 144.018, and 144.020, to read as follows:

144.010. 1. The following words, terms, and phrases when used in sections 144.010 to 144.525 have the meanings ascribed to them in this section, except when the context indicates a different meaning:

(1) "Admission" includes seats and tables, reserved or otherwise, and other similar accommodations and charges made therefor and amount paid for admission, exclusive of any admission tax imposed by the federal government or by sections 144.010 to 144.525;

(2) "Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect, and the classification of which business is of such character as to be subject to the terms of sections 144.010 to 144.525. A person is "engaging in business" in this state for purposes of sections 144.010 to 144.525 if such person "engages in business in this state" or "maintains a place of business in this state" under section 144.605. The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business, does not

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.

14 constitute engaging in business within the meaning of sections 144.010 to 144.525 unless the  
15 total amount of the gross receipts from such sales, exclusive of receipts from the sale of tangible  
16 personal property by persons which property is sold in the course of the partial or complete  
17 liquidation of a household, farm or nonbusiness enterprise, exceeds three thousand dollars in any  
18 calendar year. The provisions of this subdivision shall not be construed to make any sale of  
19 property which is exempt from sales tax or use tax on June 1, 1977, subject to that tax thereafter;

20 (3) "Captive wildlife", includes but is not limited to exotic partridges, gray partridge,  
21 northern bobwhite quail, ring-necked pheasant, captive waterfowl, captive white-tailed deer,  
22 captive elk, and captive furbearers held under permit issued by the Missouri department of  
23 conservation for hunting purposes. The provisions of this subdivision shall not apply to sales  
24 tax on a harvested animal;

25 (4) "Gross receipts", except as provided in section 144.012, means the total amount of  
26 the sale price of the sales at retail including any services other than charges incident to the  
27 extension of credit that are a part of such sales made by the businesses herein referred to, capable  
28 of being valued in money, whether received in money or otherwise; except that, the term "gross  
29 receipts" shall not include the sale price of property returned by customers when the full sale  
30 price thereof is refunded either in cash or by credit. In determining any tax due under sections  
31 144.010 to 144.525 on the gross receipts, charges incident to the extension of credit shall be  
32 specifically exempted. For the purposes of sections 144.010 to 144.525 the total amount of the  
33 sale price above mentioned shall be deemed to be the amount received. It shall also include the  
34 lease or rental consideration where the right to continuous possession or use of any article of  
35 tangible personal property is granted under a lease or contract and such transfer of possession  
36 would be taxable if outright sale were made and, in such cases, the same shall be taxable as if  
37 outright sale were made and considered as a sale of such article, and the tax shall be computed  
38 and paid by the lessee upon the rentals paid;

39 (5) "Livestock", cattle, calves, sheep, swine, ratite birds, including but not limited to,  
40 ostrich and emu, aquatic products as defined in section 277.024, llamas, alpaca, buffalo, elk  
41 documented as obtained from a legal source and not from the wild, goats, horses, other equine,  
42 or rabbits raised in confinement for human consumption;

43 (6) "Motor vehicle leasing company" shall be a company obtaining a permit from the  
44 director of revenue to operate as a motor vehicle leasing company. Not all persons renting or  
45 leasing trailers or motor vehicles need to obtain such a permit; however, no person failing to  
46 obtain such a permit may avail itself of the optional tax provisions of subsection 5 of section  
47 144.070, as hereinafter provided;

48 (7) "Person" includes any individual, firm, copartnership, joint adventure, association,  
49 corporation, municipal or private, and whether organized for profit or not, state, county, political

50 subdivision, state department, commission, board, bureau or agency, except the state  
51 transportation department, estate, trust, business trust, receiver or trustee appointed by the state  
52 or federal court, syndicate, or any other group or combination acting as a unit, and the plural as  
53 well as the singular number;

54 (8) "Purchaser" means a person who purchases tangible personal property or to whom  
55 are rendered services, receipts from which are taxable under sections 144.010 to 144.525;

56 (9) "Research or experimentation activities" are the development of an experimental or  
57 pilot model, plant process, formula, invention or similar property, and the improvement of  
58 existing property of such type. Research or experimentation activities do not include activities  
59 such as ordinary testing or inspection of materials or products for quality control, efficiency  
60 surveys, advertising promotions or research in connection with literary, historical or similar  
61 projects;

62 (10) "Sale" or "sales" includes installment and credit sales, and the exchange of  
63 properties as well as the sale thereof for money, every closed transaction constituting a sale, and  
64 means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means  
65 whatsoever, of tangible personal property for valuable consideration and the rendering,  
66 furnishing or selling for a valuable consideration any of the substances, things and services  
67 herein designated and defined as taxable under the terms of sections 144.010 to 144.525;

68 (11) "Sale at retail" means any transfer made by any person engaged in business as  
69 defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use  
70 or consumption and not for resale in any form as tangible personal property, for a valuable  
71 consideration; except that, for the purposes of sections 144.010 to 144.525 and the tax imposed  
72 thereby: (i) purchases of tangible personal property made by duly licensed physicians, dentists,  
73 optometrists and veterinarians and used in the practice of their professions shall be deemed to  
74 be purchases for use or consumption and not for resale; and (ii) the selling of computer printouts,  
75 computer output or microfilm or microfiche and computer-assisted photo compositions to a  
76 purchaser to enable the purchaser to obtain for his or her own use the desired information  
77 contained in such computer printouts, computer output on microfilm or microfiche and  
78 computer-assisted photo compositions shall be considered as the sale of a service and not as the  
79 sale of tangible personal property. Where necessary to conform to the context of sections  
80 144.010 to 144.525 and the tax imposed thereby, the term "sale at retail" shall be construed to  
81 embrace:

82 (a) Sales of admission tickets, cash admissions, charges and fees to or in places of  
83 amusement, entertainment and recreation, or games and athletic events. **Such sales shall only**  
84 **include places of dance, theater, orchestra and other performing arts productions,**  
85 **commercial sports, spectator sports, gambling, racetracks, arcades, theme and amusement**

86 **parks, water parks, circuses, carnivals, festivals, air shows, museums, marinas, motion**  
87 **picture theaters, and other commercial attractions;**

88 (b) Sales of electricity, electrical current, water and gas, natural or artificial, to domestic,  
89 commercial or industrial consumers;

90 (c) Sales of local and long distance telecommunications service to telecommunications  
91 subscribers and to others through equipment of telecommunications subscribers for the  
92 transmission of messages and conversations, and the sale, rental or leasing of all equipment or  
93 services pertaining or incidental thereto;

94 (d) Sales of service for transmission of messages by telegraph companies;

95 (e) Sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern,  
96 inn, restaurant, eating house, drugstore, dining car, tourist camp, tourist cabin, or other place in  
97 which rooms, meals or drinks are regularly served to the public;

98 (f) Sales of tickets by every person operating a railroad, sleeping car, dining car, express  
99 car, boat, airplane, and such buses and trucks as are licensed by the division of motor carrier and  
100 railroad safety of the department of economic development of Missouri, engaged in the  
101 transportation of persons for hire;

102 (12) "Seller" means a person selling or furnishing tangible personal property or rendering  
103 services, on the receipts from which a tax is imposed pursuant to section 144.020;

104 (13) The noun "tax" means either the tax payable by the purchaser of a commodity or  
105 service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities  
106 or services during the period for which he or she is required to report his or her collections, as  
107 the context may require;

108 (14) "Telecommunications service", for the purpose of this chapter, the transmission of  
109 information by wire, radio, optical cable, coaxial cable, electronic impulses, or other similar  
110 means. As used in this definition, "information" means knowledge or intelligence represented  
111 by any form of writing, signs, signals, pictures, sounds, or any other symbols.  
112 Telecommunications service does not include the following if such services are separately stated  
113 on the customer's bill or on records of the seller maintained in the ordinary course of business:

114 (a) Access to the internet, access to interactive computer services or electronic publishing  
115 services, except the amount paid for the telecommunications service used to provide such access;

116 (b) Answering services and one-way paging services;

117 (c) Private mobile radio services which are not two-way commercial mobile radio  
118 services such as wireless telephone, personal communications services or enhanced specialized  
119 mobile radio services as defined pursuant to federal law; or

120 (d) Cable or satellite television or music services; and

(15) "Product which is intended to be sold ultimately for final use or consumption" means tangible personal property, or any service that is subject to state or local sales or use taxes, or any tax that is substantially equivalent thereto, in this state or any other state.

2. For purposes of the taxes imposed under sections 144.010 to 144.525, and any other provisions of law pertaining to sales or use taxes which incorporate the provisions of sections 144.010 to 144.525 by reference, the term "manufactured homes" shall have the same meaning given it in section 700.010.

3. Sections 144.010 to 144.525 may be known and quoted as the "Sales Tax Law".

144.018. 1. Notwithstanding any other provision of law to the contrary, except as provided under subsection 2 or 3 of this section, when a purchase of tangible personal property or service subject to tax is made for the purpose of resale, such purchase shall be either exempt or excluded under this chapter if the subsequent sale is:

(1) Subject to a tax in this or any other state;

(2) For resale;

(3) Excluded from tax under this chapter;

(4) Subject to tax but exempt under this chapter; or

(5) Exempt from the sales tax laws of another state, if the subsequent sale is in such other state.

The purchase of tangible personal property by a taxpayer shall not be deemed to be for resale if such property is used or consumed by the taxpayer in providing a service on which tax is not imposed by subsection 1 of section 144.020, except purchases made in fulfillment of any obligation under a defense contract with the United States government.

2. For purposes of subdivision (2) of subsection 1 of section 144.020, a place of amusement, entertainment or recreation, including games or athletic events, shall remit tax on the amount paid for admissions or seating accommodations, or fees paid to, or in such place of amusement, entertainment or recreation. Any subsequent sale of such admissions or seating accommodations shall not be subject to tax if the initial sale was an arms length transaction for fair market value with an unaffiliated entity. If the sale of such admissions or seating accommodations is exempt or excluded from payment of sales and use taxes, the provisions of this subsection shall not require the place of amusement, entertainment, or recreation to remit tax on that sale. **Such sales under subdivision (2) of subsection 1 of section 144.020 shall only include places of dance, theater, orchestra and other performing arts productions, commercial sports, spectator sports, gambling, racetracks, arcades, theme and amusement parks, water parks, circuses, carnivals, festivals, air shows, museums, marinas, motion picture theaters, and other commercial attractions.**

29           3. For purposes of subdivision (6) of subsection 1 of section 144.020, a hotel, motel,  
30 tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp, or other  
31 place in which rooms, meals, or drinks are regularly served to the public shall remit tax on the  
32 amount of sales or charges for all rooms, meals, and drinks furnished at such hotel, motel, tavern,  
33 inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp, or other place in  
34 which rooms, meals, or drinks are regularly served to the public. Any subsequent sale of such  
35 rooms, meals, or drinks shall not be subject to tax if the initial sale was an arms length  
36 transaction for fair market value with an unaffiliated entity. If the sale of such rooms, meals, or  
37 drinks is exempt or excluded from payment of sales and use taxes, the provisions of this  
38 subsection shall not require the hotel, motel, tavern, inn, restaurant, eating house, drugstore,  
39 dining car, tourist cabin, tourist camp, or other place in which rooms, meals, or drinks are  
40 regularly served to the public to remit tax on that sale.

41           4. The provisions of this section are intended to reject and abrogate earlier case law  
42 interpretations of the state's sales and use tax law with regard to sales for resale as extended in  
43 Music City Centre Management, LLC v. Director of Revenue, 295 S.W.3d 465, (Mo. 2009) and  
44 ICC Management, Inc. v. Director of Revenue, 290 S.W.3d 699, (Mo. 2009). The provisions  
45 of this section are intended to clarify the exemption or exclusion of purchases for resale from  
46 sales and use taxes as originally enacted in this chapter.

          144.020. 1. A tax is hereby levied and imposed for the privilege of titling new and used  
2 motor vehicles, trailers, boats, and outboard motors purchased or acquired for use on the  
3 highways or waters of this state which are required to be titled under the laws of the state of  
4 Missouri and, except as provided in subdivision (9) of this subsection, upon all sellers for the  
5 privilege of engaging in the business of selling tangible personal property or rendering taxable  
6 service at retail in this state. The rate of tax shall be as follows:

7           (1) Upon every retail sale in this state of tangible personal property, excluding motor  
8 vehicles, trailers, motorcycles, mopeds, motortricycles, boats and outboard motors required to  
9 be titled under the laws of the state of Missouri and subject to tax under subdivision (9) of this  
10 subsection, a tax equivalent to four percent of the purchase price paid or charged, or in case such  
11 sale involves the exchange of property, a tax equivalent to four percent of the consideration paid  
12 or charged, including the fair market value of the property exchanged at the time and place of  
13 the exchange, except as otherwise provided in section 144.025;

14           (2) A tax equivalent to four percent of the amount paid for admission and seating  
15 accommodations, or fees paid to, or in any place of amusement, entertainment or recreation,  
16 games and athletic events. **Such tax shall only include places of dance, theater, orchestra**  
17 **and other performing arts productions, commercial sports, spectator sports, gambling,**  
18 **racetracks, arcades, theme and amusement parks, water parks, circuses, carnivals,**

19 **festivals, air shows, museums, marinas, motion picture theaters, and other commercial**  
20 **attractions;**

21 (3) A tax equivalent to four percent of the basic rate paid or charged on all sales of  
22 electricity or electrical current, water and gas, natural or artificial, to domestic, commercial or  
23 industrial consumers;

24 (4) A tax equivalent to four percent on the basic rate paid or charged on all sales of local  
25 and long distance telecommunications service to telecommunications subscribers and to others  
26 through equipment of telecommunications subscribers for the transmission of messages and  
27 conversations and upon the sale, rental or leasing of all equipment or services pertaining or  
28 incidental thereto; except that, the payment made by telecommunications subscribers or others,  
29 pursuant to section 144.060, and any amounts paid for access to the internet or interactive  
30 computer services shall not be considered as amounts paid for telecommunications services;

31 (5) A tax equivalent to four percent of the basic rate paid or charged for all sales of  
32 services for transmission of messages of telegraph companies;

33 (6) A tax equivalent to four percent on the amount of sales or charges for all rooms,  
34 meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore,  
35 dining car, tourist cabin, tourist camp or other place in which rooms, meals or drinks are  
36 regularly served to the public;

37 (7) A tax equivalent to four percent of the amount paid or charged for intrastate tickets  
38 by every person operating a railroad, sleeping car, dining car, express car, boat, airplane and such  
39 buses and trucks as are licensed by the division of motor carrier and railroad safety of the  
40 department of economic development of Missouri, engaged in the transportation of persons for  
41 hire;

42 (8) A tax equivalent to four percent of the amount paid or charged for rental or lease of  
43 tangible personal property, provided that if the lessor or renter of any tangible personal property  
44 had previously purchased the property under the conditions of "sale at retail" or leased or rented  
45 the property and the tax was paid at the time of purchase, lease or rental, the lessor, sublessor,  
46 renter or subrenter shall not apply or collect the tax on the subsequent lease, sublease, rental or  
47 subrental receipts from that property. The purchase, rental or lease of motor vehicles, trailers,  
48 motorcycles, mopeds, motortricycles, boats, and outboard motors shall be taxed and the tax paid  
49 as provided in this section and section 144.070. In no event shall the rental or lease of boats and  
50 outboard motors be considered a sale, charge, or fee to, for or in places of amusement,  
51 entertainment or recreation nor shall any such rental or lease be subject to any tax imposed to,  
52 for, or in such places of amusement, entertainment or recreation. Rental and leased boats or  
53 outboard motors shall be taxed under the provisions of the sales tax laws as provided under such  
54 laws for motor vehicles and trailers. Tangible personal property which is exempt from the sales

55 or use tax under section 144.030 upon a sale thereof is likewise exempt from the sales or use tax  
56 upon the lease or rental thereof;

57 (9) A tax equivalent to four percent of the purchase price, as defined in section 144.070,  
58 of new and used motor vehicles, trailers, boats, and outboard motors purchased or acquired for  
59 use on the highways or waters of this state which are required to be registered under the laws of  
60 the state of Missouri. This tax is imposed on the person titling such property, and shall be paid  
61 according to the procedures in section 144.440.

62 2. All tickets sold which are sold under the provisions of sections 144.010 to 144.525  
63 which are subject to the sales tax shall have printed, stamped or otherwise endorsed thereon, the  
64 words "This ticket is subject to a sales tax."

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