

FIRST REGULAR SESSION

# HOUSE BILL NO. 938

## 99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORNEJO.

1950H.011

D. ADAM CRUMBLISS, Chief Clerk

### AN ACT

To repeal section 144.026, RSMo, and to enact in lieu thereof two new sections relating to sales and use tax exemptions.

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

Section A. Section 144.026, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 144.017 and 144.026, to read as follows:

144.017. 1. This section affirms existing law as interpreted by the Missouri supreme court in *Bridge Data Co. v. Director of Revenue*, 794 S.W.2d 204 (Mo. banc 1990); *Concord Publishing House v. Director of Revenue*, 916 S.W.2d 186 (Mo. banc 1996); *DST Systems, Inc. v. Director of Revenue*, 43 S.W.3d 799 (Mo. banc 2001); *Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d 763 (Mo. banc 2002); *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo. banc 2005); and *E & B Granite, Inc. v. Director of Revenue*, 331 S.W.3d 314 (Mo. banc 2011). The director of revenue and all courts of competent jurisdiction shall follow the reasoning of the Missouri supreme court in these decisions.

2. This section rejects and abrogates the Missouri supreme court's interpretation of the exemptions found in subsection 2 of section 144.054 and subdivisions (5) and (6) of subsection 2 of section 144.030 in *IBM Corporation v. Director of Revenue*, 491 S.W.3d 535 (Mo. banc 2016), any other decision of the Missouri supreme court or administrative hearing commission, and any letter ruling or regulation of the director of revenue that is inconsistent with this section.

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.

144.026. 1. The director of revenue shall not send notice to any taxpayer under subsection 2 of section 144.021 regarding the decision in IBM Corporation v. Director of Revenue, [~~Case No. 94999~~] **491 S.W.3d 535** (Mo. banc 2016), prior to August 28, 2017.

2. **The general assembly intends expressly through this statute to clarify existing law as interpreted by the Missouri supreme court in Southwestern Bell Tel. Co. v. Director of Revenue, 78 S.W.3d 763 (Mo. banc 2002), and Southwestern Bell Tel. Co. v. Director of Revenue, 182 S.W.3d 226 (Mo. banc 2005), holding that telecommunications services, including the electronic transfer of a voice or voices, constitutes the manufacturing of a product for the purposes of the exemptions in subdivisions (5) and (6) of subsection 2 of section 144.030 and subsection 2 of section 144.054. The director of revenue and all courts of competent jurisdiction shall follow the reasoning of the Missouri supreme court in these decisions and their progeny in interpreting and applying the exemptions in subdivisions (5) and (6) of subsection 2 of section 144.030 and subsection 2 of section 144.054a and shall apply such reasoning to all pending audits, assessments, refund claims, and claims for credit not finally adjudicated as of the effective date of this section, as well as all future audits, assessments, refund claims, and claims for credit.**

3. **The general assembly further intends expressly to abrogate through this statute the Missouri supreme court's interpretation of the exemptions found in subdivisions (5) and (6) of subsection 2 of section 144.030 and subsection 2 of section 144.054 in IBM Corporation v. Director of Revenue, 491 S.W.3d 535 (Mo. banc 2016), and in any other decision of the Missouri supreme court or administrative hearing commission and any letter ruling or regulation of the director of revenue that is inconsistent with this section.**

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