

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

**Offered By**

1 AMEND House Committee Substitute for House Bill No. 548, Page 2, Section 143.011, Line 47,  
2 by inserting after the word "sales" the words "and use"; and

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4 Further amend said bill, page, and section, Line 48, by inserting after the word "sales" the words  
5 "and use"; and

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7 Further amend said bill, page, and section, Line 50, by inserting after the word "sales" the words  
8 "and use"; and

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10 Further amend said bill, page, and section, Line 51, by inserting after the word "sales" the words  
11 "and use"; and

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13 Further amend said bill and section, Page 3, Line 55, by inserting after the word "sales" the words  
14 "and use"; and

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16 Further amend said bill, Pages 3-4, Section 144.530, Lines 1-19, by deleting all of said section and  
17 lines; and

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19 Further amend said bill, Page 4, Section 144.535, Lines 1-25, by deleting all of said section and  
20 lines; and

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22 Further amend said bill, Pages 4-5, Section 144.540, Lines 1-29, by deleting all of said section and  
23 lines; and

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25 Further amend said bill, Page 5, Section 144.545, Lines 1-8, by deleting all of said section and lines;  
26 and

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28 Further amend said bill, Pages 5-6, Section 144.565, Lines 1-11, by deleting all of said section and  
29 lines; and

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31 Further amend said bill, Pages 6-8, Section 144.575, Lines 1-75, by deleting all of said section and  
32 lines and inserting in lieu thereof the following:

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34 "144.605. The following words and phrases as used in sections 144.600 to 144.745 mean  
35 and include:

36 (1) "Calendar quarter", the period of three consecutive calendar months ending on March

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

thirty-first, June thirtieth, September thirtieth or December thirty-first;

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

(a) Maintaining or having a franchisee or licensee operating under the seller's trade name in this state if the franchisee or licensee is required to collect sales tax pursuant to sections 144.010 to 144.525;

(b) Soliciting sales or taking orders by sales agents or traveling representatives;

(c) A vendor is presumed to engage in business activities within this state if any person, other than a common carrier acting in its capacity as such, that has substantial nexus with this state:

a. Sells a similar line of products as the vendor and does so under the same or a similar business name;

b. Maintains an office, distribution facility, warehouse, or storage place, or similar place of business in the state to facilitate the delivery of property or services sold by the vendor to the vendor's customers;

c. Delivers, installs, assembles, or performs maintenance services for the vendor's customers within the state;

d. Facilitates the vendor's delivery of property to customers in the state by allowing the vendor's customers to pick up property sold by the vendor at an office, distribution facility, warehouse, storage place, or similar place of business maintained by the person in the state; or

e. Conducts any other activities in the state that are significantly associated with the vendor's ability to establish and maintain a market in the state for the sales;

(d) The presumption in paragraph (c) of this subdivision may be rebutted by demonstrating that the person's activities in the state are not significantly associated with the vendor's ability to establish or maintain a market in this state for the vendor's sales;

(e) Notwithstanding paragraph (c) of this subdivision, a vendor shall be presumed to engage in business activities within this state if the vendor enters into an agreement with one or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet website, an in-person oral presentation, telemarketing, or otherwise, to the vendor, if the cumulative gross receipts from sales by the vendor to customers in the state who are referred to the vendor by all residents with this type of an agreement with the vendor is in excess of ten thousand dollars during the preceding twelve months;

(f) The presumption in paragraph (e) of this subdivision may be rebutted by submitting proof that the residents with whom the vendor has an agreement did not engage in any activity within the state that was significantly associated with the vendor's ability to establish or maintain the vendor's market in the state during the preceding twelve months. Such proof may consist of sworn written statements from all of the residents with whom the vendor has an agreement stating that they did not engage in any solicitation in the state on behalf of the vendor during the preceding year provided that such statements were provided and obtained in good faith;

(g) a. Beginning January 1, 2020, a vendor engages in business activities within this state if the cumulative gross receipts from the vendor's sales of tangible personal property to purchasers for the purpose of storage, use, or consumption in this state are one hundred thousand dollars or more, or a vendor sold tangible personal property into this state in two hundred or more separate transactions, during any twelve-month period, as determined under subparagraph b of this paragraph;

b. Following the close of each calendar quarter, a vendor shall determine whether the vendor met the requirements provided under subparagraph a of this paragraph during the twelve-month period ending on the last day of the preceding calendar quarter. If the vendor met such requirements for any such twelve-month period, such vendor shall collect and remit the tax as provided under section 144.635 for a period of not less than twelve months, beginning not more than three months

1 following the close of the preceding calendar quarter, and shall continue to collect and remit the tax  
 2 for as long as the vendor is engaged in business activities in this state, as provided under this  
 3 paragraph, or otherwise maintains a substantial nexus with this state;

4 c. The provisions of this paragraph shall only apply to vendors that do not have a physical  
 5 presence within the state and the associated sales of tangible personal property occurred with use of  
 6 the internet;

7 d. Any department that has the constitutional authority to collect sales or use tax under  
 8 Article IV of the Constitution of Missouri shall remit any moneys collected under this paragraph to  
 9 the department of revenue and such moneys shall be deposited into the state general revenue fund  
 10 established under section 33.543;

11 e. Any vendor that meets subparagraph c of this paragraph shall not be subject to a use tax  
 12 imposed by a political subdivision in this state;

13 (3) "Maintains a place of business in this state" includes maintaining, occupying, or using,  
 14 permanently or temporarily, directly or indirectly, by whatever name called, an office, place of  
 15 distribution, sales or sample room or place, warehouse or storage place, or other place of business in  
 16 this state, whether owned or operated by the vendor or by any other person other than a common  
 17 carrier acting in its capacity as such;

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

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

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

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

35 (8) "Sales price", the consideration including the charges for services, except charges  
 36 incident to the extension of credit, paid or given, or contracted to be paid or given, by the purchaser  
 37 to the vendor for the tangible personal property, including any services that are a part of the sale,  
 38 valued in money, whether paid in money or otherwise, and any amount for which credit is given to  
 39 the purchaser by the vendor, without any deduction therefrom on account of the cost of the property  
 40 sold, the cost of materials used, labor or service cost, losses or any other expenses whatsoever,  
 41 except that cash discounts allowed and taken on sales shall not be included and "sales price" shall  
 42 not include the amount charged for property returned by customers upon rescission of the contract  
 43 of sales when the entire amount charged therefor is refunded either in cash or credit or the amount  
 44 charged for labor or services rendered in installing or applying the property sold, the use, storage or  
 45 consumption of which is taxable pursuant to sections 144.600 to 144.745. The sales price shall not  
 46 include usual and customary delivery charges that are separately stated. In determining the amount  
 47 of tax due pursuant to sections 144.600 to 144.745, any charge incident to the extension of credit  
 48 shall be specifically exempted;

49 (9) "Selling agent", every person acting as a representative of a principal, when such

principal is not registered with the director of revenue of the state of Missouri for the collection of the taxes imposed pursuant to sections 144.010 to 144.525 or sections 144.600 to 144.745 and who receives compensation by reason of the sale of tangible personal property of the principal, if such property is to be stored, used, or consumed in this state;

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

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

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

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

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

Further amend said bill, Page 8, Section 144.701, Lines 19-21, by deleting all of said lines and inserting in lieu thereof the following:

"2. The revenue derived under paragraph (g) of subdivision (2) of section 144.605 shall be exempt from the provisions of this section and shall be deposited into the state general revenue fund established under section 33.543.

144.752. 1. For the purposes of this section, the following terms shall mean:

(1) "Marketplace facilitator", a person that contracts with sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products through an electronic marketplace operated by a person, and engages:

(a) Either directly or indirectly, through one or more affiliated persons in any of the following:

a. Transmitting or otherwise communicating the offer or acceptance between the purchaser and marketplace seller;

b. Owning or operating the infrastructure, electronic or physical, or technology that brings purchasers and marketplace sellers together;

c. Providing a virtual currency that purchasers are allowed or required to use to purchase products from the marketplace seller; or

d. Software development or research and development activities related to any of the activities described in paragraph (b) of this subdivision if such activities are directly related to an

1 electronic marketplace operated by a person or an affiliated person; and

2 (b) In any of the following activities with respect to the marketplace seller's products:

3 a. Payment processing services;

4 b. Fulfillment or storage services;

5 c. Listing products for sale;

6 d. Setting prices;

7 e. Branding sales as those of the marketplace facilitator;

8 f. Order taking;

9 g. Advertising or promotion; or

10 h. Providing customer service or accepting or assisting with returns or exchanges;

11 A marketplace facilitator is a vendor as defined in section 144.605 and shall comply with the  
12 provisions of sections 144.600 to 144.753;

13 (2) "Marketplace seller", a seller that makes sales through any electronic marketplace  
14 operated by a marketplace facilitator;

15 (3) "Person", any individual, firm, copartnership, joint venture, association, corporation,  
16 municipal or private, whether organized for profit or not, state, county, political subdivision, state  
17 department, commission, board, bureau or agency, except the department of transportation, estate,  
18 trust, business trust, receiver or trustee appointed by the state or federal court, syndicate, or any  
19 other group or combination acting as a unit;

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

22 (5) "Retail sale", the same meaning as defined under sections 144.010 and 144.011,  
23 excluding motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats, and outboard motors  
24 required to be titled under the laws of the state and subject to tax under subdivision (9) of subsection  
25 1 of section 144.020;

26 (6) "Seller", a person selling or furnishing tangible personal property or rendering services  
27 on the receipts from which a tax is imposed under section 144.020.

28 2. By no later than January 1, 2020, marketplace facilitators that reach the threshold  
29 provided under paragraph (g) of subdivision (2) of section 144.605 shall register with the  
30 department to collect and remit use tax on sales made through the marketplace facilitator's  
31 marketplace by or on behalf of a marketplace seller that are delivered into the state, whether by the  
32 marketplace facilitator or another person. Such retail sales shall include those made directly by the  
33 marketplace facilitator and shall also include those retail sales made by marketplace sellers through  
34 the marketplace facilitator's marketplace. The collection and reporting requirements of this  
35 subsection shall not apply to retail sales other than those made through a marketplace facilitator's  
36 marketplace.

37 3. Marketplace facilitators that are required to collect use tax under this section shall report  
38 and remit the tax in accordance with the provisions of this chapter and shall maintain records of all  
39 sales delivered to a location in the state, including copies of invoices showing the purchaser,  
40 address, purchase amount, and use tax collected. Such records shall be made available for review  
41 and inspection upon request by the department.

42 4. Marketplace facilitators who properly collect and remit to the department in a timely  
43 manner use tax on sales in accordance with the provisions of this section by or on behalf of  
44 marketplace sellers shall be eligible for any discount provided under this chapter.

45 5. A marketplace facilitator shall provide the purchaser with a statement or invoice showing  
46 that the use tax was collected and shall be remitted on the purchaser's behalf.

47 6. Any taxpayer who remits use tax under this section shall be entitled to refunds or credits  
48 to the same extent and in the same manner provided for in section 144.190 for taxes collected and  
49 remitted under this section.

1        7. Marketplace facilitators shall be subject to the penalty provisions, procedures, and  
2 reporting requirements provided under the provisions of this chapter.

3        8. For the purposes of this section, a marketplace facilitator shall not include a third party  
4 financial institution appointed by a merchant or a marketplace facilitator to handle various forms of  
5 payment transactions, such as processing credit cards and debit cards, and whose sole activity with  
6 respect to marketplace sales is to facilitate the payment transactions between two parties."; and  
7

8 Further amend said bill by amending the title, enacting clause, and intersectional references  
9 accordingly.