

FIRST REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 548
100TH GENERAL ASSEMBLY

1235H.02P

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 143.011, 144.605, and 144.701, RSMo, and to enact in lieu thereof four new sections relating to taxation, with a penalty provision.

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

Section A. Sections 143.011, 144.605, and 144.701, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 143.011, 144.605, 144.701, and 144.752, to read as follows:

143.011. 1. A tax is hereby imposed for every taxable year on the Missouri taxable income of every resident. The tax shall be determined by applying the tax table or the rate provided in section 143.021, which is based upon the following rates:

4 If the Missouri taxable income is:	The tax is:
5 Not over \$1,000.00	1 1/2% of the Missouri taxable income
6 Over \$1,000 but not over \$2,000	\$15 plus 2% of excess over \$1,000
7 Over \$2,000 but not over \$3,000	\$35 plus 2 1/2% of excess over \$2,000
8 Over \$3,000 but not over \$4,000	\$60 plus 3% of excess over \$3,000
9 Over \$4,000 but not over \$5,000	\$90 plus 3 1/2% of excess over \$4,000
10 Over \$5,000 but not over \$6,000	\$125 plus 4% of excess over \$5,000
11 Over \$6,000 but not over \$7,000	\$165 plus 4 1/2% of excess over \$6,000
12 Over \$7,000 but not over \$8,000	\$210 plus 5% of excess over \$7,000
13 Over \$8,000 but not over \$9,000	\$260 plus 5 1/2% of excess over \$8,000
14 Over \$9,000	\$315 plus 6% of excess over \$9,000

15 2. (1) Beginning with the 2017 calendar year, the top rate of tax under subsection 1 of
16 this section may be reduced over a period of years. Each reduction in the top rate of tax shall be

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.

17 by one-tenth of a percent and no more than one reduction shall occur in a calendar year. No
18 more than five reductions shall be made under this subsection. Reductions in the rate of tax shall
19 take effect on January first of a calendar year and such reduced rates shall continue in effect until
20 the next reduction occurs.

21 (2) A reduction in the rate of tax shall only occur if the amount of net general revenue
22 collected in the previous fiscal year exceeds the highest amount of net general revenue collected
23 in any of the three fiscal years prior to such fiscal year by at least one hundred fifty million
24 dollars.

25 (3) Any modification of tax rates under this subsection shall only apply to tax years that
26 begin on or after a modification takes effect.

27 (4) The director of the department of revenue shall, by rule, adjust the tax tables under
28 subsection 1 of this section to effectuate the provisions of this subsection. The bracket for
29 income subject to the top rate of tax shall be eliminated once the top rate of tax has been reduced
30 to five and one-half percent, and the top remaining rate of tax shall apply to all income in excess
31 of the income in the second highest remaining income bracket.

32 3. (1) In addition to the rate reductions under subsection 2 of this section, beginning
33 with the 2019 calendar year, the top rate of tax under subsection 1 of this section shall be reduced
34 by four-tenths of one percent. Such reduction in the rate of tax shall take effect on January first
35 of the 2019 calendar year.

36 (2) The modification of tax rates under this subsection shall only apply to tax years that
37 begin on or after the date the modification takes effect.

38 (3) The director of the department of revenue shall, by rule, adjust the tax tables under
39 subsection 1 of this section to effectuate the provisions of this subsection.

40 4. (1) **In addition to the rate reductions under subsections 2 and 3 of this section,**
41 **beginning with the 2020 calendar year, the top rate of tax under subsection 1 of this section**
42 **shall be reduced by fourteen-hundredths of one percent. Such reduction in the rate of tax**
43 **shall take effect on January first of the 2020 calendar year.**

44 (2) **In addition to the rate reductions under subsections 2 and 3 of this section, and**
45 **the rate reduction under subdivision (1) of this subsection, beginning with the 2021**
46 **calendar year, the top rate of tax under subsection 1 of this section may be adjusted**
47 **annually over a period of two years. For every additional forty million dollars in sales and**
48 **use tax revenue received in a tax year over a four percent increase in sales and use tax**
49 **revenue received in the previous tax year, the top rate of tax under subsection 1 of this**
50 **section shall be reduced by five-hundredths of one percent. For every forty million dollars**
51 **by which the sales and use tax revenue received in a tax year fails to equal a four percent**
52 **increase in the amount of sales and use tax revenue collected in the previous tax year, the**

53 **top rate of tax under subsection 1 of this section shall be increased by five-hundredths of**
54 **one percent.**

55 **(3) Any adjustment of tax rates under subdivision (2) of this subsection shall take**
56 **effect on January first of the calendar year following the year in which a change in sales**
57 **and use tax revenue triggered an adjustment.**

58 **(4) The director of the department of revenue shall, by rule, adjust the tax tables**
59 **under subsection 1 of this section to effectuate the provisions of this subsection.**

60 **5.** Beginning with the 2017 calendar year, the brackets of Missouri taxable income
61 identified in subsection 1 of this section shall be adjusted annually by the percent increase in
62 inflation. The director shall publish such brackets annually beginning on or after October 1,
63 2016. Modifications to the brackets shall take effect on January first of each calendar year and
64 shall apply to tax years beginning on or after the effective date of the new brackets.

65 ~~[5-]~~ **6.** As used in this section, the following terms mean:

66 (1) "CPI", the Consumer Price Index for All Urban Consumers for the United States as
67 reported by the Bureau of Labor Statistics, or its successor index;

68 (2) "CPI for the preceding calendar year", the average of the CPI as of the close of the
69 twelve month period ending on August thirty-first of such calendar year;

70 (3) "Net general revenue collected", all revenue deposited into the general revenue fund,
71 less refunds and revenues originally deposited into the general revenue fund but designated by
72 law for a specific distribution or transfer to another state fund;

73 (4) "Percent increase in inflation", the percentage, if any, by which the CPI for the
74 preceding calendar year exceeds the CPI for the year beginning September 1, 2014, and ending
75 August 31, 2015.

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) Maintaining or having a franchisee or licensee operating under the seller's trade name
7 in this state if the franchisee or licensee is required to collect sales tax pursuant to sections
8 144.010 to 144.525;

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

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

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

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

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

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

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

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

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

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

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

49 **b. Following the close of each calendar quarter, a vendor shall determine whether**
50 **the vendor met the requirements provided under subparagraph a of this paragraph during**
51 **the twelve-month period ending on the last day of the preceding calendar quarter. If the**
52 **vendor met such requirements for any such twelve-month period, such vendor shall collect**
53 **and remit the tax as provided under section 144.635 for a period of not less than twelve**
54 **months, beginning not more than three months following the close of the preceding**
55 **calendar quarter, and shall continue to collect and remit the tax for as long as the vendor**
56 **is engaged in business activities in this state, as provided under this paragraph, or**
57 **otherwise maintains a substantial nexus with this state;**

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

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

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

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

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

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

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

82 (7) "Sale", any transfer, barter or exchange of the title or ownership of tangible personal
83 property, or the right to use, store or consume the same, for a consideration paid or to be paid,
84 and any transaction whether called leases, rentals, bailments, loans, conditional sales or

85 otherwise, and notwithstanding that the title or possession of the property or both is retained for
86 security. For the purpose of this law the place of delivery of the property to the purchaser, user,
87 storer or consumer is deemed to be the place of sale, whether the delivery be by the vendor or
88 by common carriers, private contractors, mails, express, agents, salesmen, solicitors, hawkers,
89 representatives, consignors, peddlers, canvassers or otherwise;

90 (8) "Sales price", the consideration including the charges for services, except charges
91 incident to the extension of credit, paid or given, or contracted to be paid or given, by the
92 purchaser to the vendor for the tangible personal property, including any services that are a part
93 of the sale, valued in money, whether paid in money or otherwise, and any amount for which
94 credit is given to the purchaser by the vendor, without any deduction therefrom on account of the
95 cost of the property sold, the cost of materials used, labor or service cost, losses or any other
96 expenses whatsoever, except that cash discounts allowed and taken on sales shall not be included
97 and "sales price" shall not include the amount charged for property returned by customers upon
98 rescission of the contract of sales when the entire amount charged therefor is refunded either in
99 cash or credit or the amount charged for labor or services rendered in installing or applying the
100 property sold, the use, storage or consumption of which is taxable pursuant to sections 144.600
101 to 144.745. The sales price shall not include usual and customary delivery charges that are
102 separately stated. In determining the amount of tax due pursuant to sections 144.600 to 144.745,
103 any charge incident to the extension of credit shall be specifically exempted;

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

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

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

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

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

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

144.701. 1. The revenue derived from the rate of one cent on the dollar of the tax
2 imposed by sections 144.010 to 144.430 and sections 144.600 to 144.745 which shall be deemed
3 to be local tax revenue, shall be deposited by the state treasurer in a special trust fund, which is
4 hereby created, to be known as the "School District Trust Fund". The money in the fund shall
5 be distributed to the public school districts of the state in the manner provided in sections
6 163.031 and 163.087 and shall be appropriated and used for no other purpose; except that, of all
7 refunds made of taxes collected under the provisions of sections 144.010 to 144.430 and sections
8 144.600 to 144.745, the appropriate percentage of any refund shall be paid from the school
9 district trust fund, and except that the state may retain a fee as a charge for collecting and
10 disbursing moneys so deposited, and transfers may be made from the fund as provided in section
11 164.013. The state collection fee shall not exceed two and one-half million dollars or one
12 percent of the amount deposited in the fund, whichever is less. The fee shall be negotiated
13 annually through the appropriation process. Any balance remaining in the fund at the end of an
14 appropriation period shall not be transferred to general revenue, and the provisions of section
15 33.080 shall not apply to the fund. Moneys in the trust fund shall be invested by the state
16 treasurer in the same deposits and obligations in which state funds are authorized by law to be
17 invested, except that the deposits and obligations shall mature and become payable in time for
18 distribution of the funds as provided in sections 163.031 and 163.087.

19 **2. The revenue derived under paragraph (g) of subdivision (2) of section 144.605**
20 **shall be exempt from the provisions of this section and shall be deposited into the state**
21 **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 electronic marketplace operated by a person or an affiliated person; and

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

a. Payment processing services;

b. Fulfillment or storage services;

c. Listing products for sale;

d. Setting prices;

e. Branding sales as those of the marketplace facilitator;

f. Order taking;

g. Advertising or promotion; or

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

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

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

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

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

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

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

44 2. By no later than January 1, 2020, marketplace facilitators that reach the
45 threshold provided under paragraph (g) of subdivision (2) of section 144.605 shall register
46 with the department to collect and remit use tax on sales made through the marketplace
47 facilitator's marketplace by or on behalf of a marketplace seller that are delivered into the
48 state, whether by the marketplace facilitator or another person. Such retail sales shall
49 include those made directly by the marketplace facilitator and shall also include those
50 retail sales made by marketplace sellers through the marketplace facilitator's marketplace.
51 The collection and reporting requirements of this subsection shall not apply to retail sales
52 other than those made through a marketplace facilitator's marketplace.

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

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

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

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

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

68 8. For the purposes of this section, a marketplace facilitator shall not include a
69 third party financial institution appointed by a merchant or a marketplace facilitator to
70 handle various forms of payment transactions, such as processing credit cards and debit
71 cards, and whose sole activity with respect to marketplace sales is to facilitate the payment
72 transactions between two parties.

✓