

SECOND REGULAR SESSION

# HOUSE BILL NO. 2658

## 100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RIGGS.

5490H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

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

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

Section A. Section 144.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.030, to read as follows: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, section 238.235, 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, section 238.235, 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; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing water to be sold ultimately at retail; or feed for livestock or poultry; or grain to be converted into

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.

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, which are to be used in connection with the growth  
23 or production of crops, fruit trees or orchards applied before, during, or after planting, the crop  
24 of which when harvested will be sold at retail or will be converted into foodstuffs which are to  
25 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 usable 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. For the purposes of this subdivision, subdivision  
51 (5) of this subsection, and section 144.054, as well as the definition in subdivision (9) of  
52 subsection 1 of section 144.010, the term "product" includes telecommunications services and  
53 the term "manufacturing" shall include the production, or production and transmission, of

54 telecommunications services. The preceding sentence does not make a substantive change in the  
55 law and is intended to clarify that the term "manufacturing" has included and continues to  
56 include the production and transmission of "telecommunications services", as enacted in this  
57 subdivision and subdivision (5) of this subsection, as well as the definition in subdivision (9) of  
58 subsection 1 of section 144.010. The preceding two sentences reaffirm legislative intent  
59 consistent with the interpretation of this subdivision and subdivision (5) of this subsection in  
60 *Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d 763 (Mo. banc 2002) and  
61 *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo. banc 2005), and  
62 accordingly abrogates the Missouri supreme court's interpretation of those exemptions in *IBM*  
63 *Corporation v. Director of Revenue*, 491 S.W.3d 535 (Mo. banc 2016) to the extent inconsistent  
64 with this section and *Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d 763 (Mo.  
65 banc 2002) and *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo. banc  
66 2005). The construction and application of this subdivision as expressed by the Missouri  
67 supreme court in *DST Systems, Inc. v. Director of Revenue*, 43 S.W.3d 799 (Mo. banc 2001);  
68 *Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d 763 (Mo. banc 2002); and  
69 *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo. banc 2005), is hereby  
70 affirmed. Material recovery is not the reuse of materials within a manufacturing process or the  
71 use of a product previously recovered. The material recovery processing plant shall qualify  
72 under the provisions of this section regardless of ownership of the material being recovered;

73 (5) Machinery and equipment, and parts and the materials and supplies solely required  
74 for the installation or construction of such machinery and equipment, purchased and used to  
75 establish new or to expand existing manufacturing, mining or fabricating plants in the state if  
76 such machinery and equipment is used directly in manufacturing, mining or fabricating a product  
77 which is intended to be sold ultimately for final use or consumption. The construction and  
78 application of this subdivision as expressed by the Missouri supreme court in *DST Systems, Inc.*  
79 *v. Director of Revenue*, 43 S.W.3d 799 (Mo. banc 2001); *Southwestern Bell Tel. Co. v. Director*  
80 *of Revenue*, 78 S.W.3d 763 (Mo. banc 2002); and *Southwestern Bell Tel. Co. v. Director of*  
81 *Revenue*, 182 S.W.3d 226 (Mo. banc 2005), is hereby affirmed;

82 (6) Tangible personal property which is used exclusively in the manufacturing,  
83 processing, modification or assembling of products sold to the United States government or to  
84 any agency of the United States government;

85 (7) Animals or poultry used for breeding or feeding purposes, or captive wildlife;

86 (8) Newsprint, ink, computers, photosensitive paper and film, toner, printing plates and  
87 other machinery, equipment, replacement parts and supplies used in producing newspapers  
88 published for dissemination of news to the general public;

89           (9) The rentals of films, records or any type of sound or picture transcriptions for public  
90 commercial display;

91           (10) Pumping machinery and equipment used to propel products delivered by pipelines  
92 engaged as common carriers;

93           (11) Railroad rolling stock for use in transporting persons or property in interstate  
94 commerce and motor vehicles licensed for a gross weight of twenty-four thousand pounds or  
95 more or trailers used by common carriers, as defined in section 390.020, in the transportation of  
96 persons or property;

97           (12) Electrical energy used in the actual primary manufacture, processing, compounding,  
98 mining or producing of a product, or electrical energy used in the actual secondary processing  
99 or fabricating of the product, or a material recovery processing plant as defined in subdivision  
100 (4) of this subsection, in facilities owned or leased by the taxpayer, if the total cost of electrical  
101 energy so used exceeds ten percent of the total cost of production, either primary or secondary,  
102 exclusive of the cost of electrical energy so used or if the raw materials used in such processing  
103 contain at least twenty-five percent recovered materials as defined in section 260.200. There  
104 shall be a rebuttable presumption that the raw materials used in the primary manufacture of  
105 automobiles contain at least twenty-five percent recovered materials. For purposes of this  
106 subdivision, "processing" means any mode of treatment, act or series of acts performed upon  
107 materials to transform and reduce them to a different state or thing, including treatment necessary  
108 to maintain or preserve such processing by the producer at the production facility;

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

111           (14) Machinery, equipment, appliances and devices purchased or leased and used solely  
112 for the purpose of preventing, abating or monitoring air pollution, and materials and supplies  
113 solely required for the installation, construction or reconstruction of such machinery, equipment,  
114 appliances and devices;

115           (15) Machinery, equipment, appliances and devices purchased or leased and used solely  
116 for the purpose of preventing, abating or monitoring water pollution, and materials and supplies  
117 solely required for the installation, construction or reconstruction of such machinery, equipment,  
118 appliances and devices;

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

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

125 corporation, provided, however, that a municipality or other political subdivision may enter into  
126 revenue-sharing agreements with private persons, firms, or corporations providing goods or  
127 services, including management services, in or for the place of amusement, entertainment or  
128 recreation, games or athletic events, and provided further that nothing in this subdivision shall  
129 exempt from tax any amounts retained by any private person, firm, or corporation under such  
130 revenue-sharing agreement;

131 (18) All sales of insulin, and all sales, rentals, repairs, and parts of durable medical  
132 equipment, prosthetic devices, and orthopedic devices as defined on January 1, 1980, by the  
133 federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including  
134 the items specified in Section 1862(a)(12) of that act, and also specifically including hearing aids  
135 and hearing aid supplies and all sales of drugs which may be legally dispensed by a licensed  
136 pharmacist only upon a lawful prescription of a practitioner licensed to administer those items,  
137 including samples and materials used to manufacture samples which may be dispensed by a  
138 practitioner authorized to dispense such samples and all sales or rental of medical oxygen, home  
139 respiratory equipment and accessories including parts, and hospital beds and accessories and  
140 ambulatory aids including parts, and all sales or rental of manual and powered wheelchairs  
141 including parts, and stairway lifts, Braille writers, electronic Braille equipment and, if purchased  
142 or rented by or on behalf of a person with one or more physical or mental disabilities to enable  
143 them to function more independently, all sales or rental of scooters including parts, and reading  
144 machines, electronic print enlargers and magnifiers, electronic alternative and augmentative  
145 communication devices, and items used solely to modify motor vehicles to permit the use of such  
146 motor vehicles by individuals with disabilities or sales of over-the-counter or nonprescription  
147 drugs to individuals with disabilities, and drugs required by the Food and Drug Administration  
148 to meet the over-the-counter drug product labeling requirements in 21 CFR 201.66, or its  
149 successor, as prescribed by a health care practitioner licensed to prescribe;

150 (19) All sales made by or to religious and charitable organizations and institutions in  
151 their religious, charitable or educational functions and activities and all sales made by or to all  
152 elementary and secondary schools operated at public expense in their educational functions and  
153 activities;

154 (20) All sales of aircraft to common carriers for storage or for use in interstate commerce  
155 and all sales made by or to not-for-profit civic, social, service or fraternal organizations,  
156 including fraternal organizations which have been declared tax-exempt organizations pursuant  
157 to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, in their civic or  
158 charitable functions and activities and all sales made to eleemosynary and penal institutions and  
159 industries of the state, and all sales made to any private not-for-profit institution of higher  
160 education not otherwise excluded pursuant to subdivision (19) of this subsection or any

161 institution of higher education supported by public funds, and all sales made to a state relief  
162 agency in the exercise of relief functions and activities;

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

170 (22) All sales made to any private not-for-profit elementary or secondary school, all sales  
171 of feed additives, medications or vaccines administered to livestock or poultry in the production  
172 of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for  
173 food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber,  
174 all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying  
175 agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as  
176 defined in section 142.028, natural gas, propane, and electricity used by an eligible new  
177 generation cooperative or an eligible new generation processing entity as defined in section  
178 348.432, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and  
179 trailers, and any freight charges on any exempt item. As used in this subdivision, the term "feed  
180 additives" means tangible personal property which, when mixed with feed for livestock or  
181 poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term  
182 "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and other assorted  
183 pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark  
184 the application of pesticides and herbicides for the production of crops, livestock or poultry. As  
185 used in this subdivision, the term "farm machinery and equipment" means new or used farm  
186 tractors and such other new or used farm machinery and equipment and repair or replacement  
187 parts thereon and any accessories for and upgrades to such farm machinery and equipment, rotary  
188 mowers used exclusively for agricultural purposes, and supplies and lubricants used exclusively,  
189 solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants,  
190 chukar, quail, or for producing milk for ultimate sale at retail, including field drain tile, and  
191 one-half of each purchaser's purchase of diesel fuel therefor which is:

192 (a) Used exclusively for agricultural purposes;

193 (b) Used on land owned or leased for the purpose of producing farm products; and

194 (c) Used directly in producing farm products to be sold ultimately in processed form or  
195 otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold  
196 ultimately in processed form at retail;

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

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

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

219           (c) Each person making domestic use purchases of services or property and who uses any  
220 portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day  
221 of the fourth month following the year of purchase, and without assessment, notice or demand,  
222 file a return and pay sales tax on that portion of nondomestic purchases. Each person making  
223 nondomestic purchases of services or property and who uses any portion of the services or  
224 property so purchased for domestic use, and each person making domestic purchases on behalf  
225 of occupants of residential apartments or condominiums through a single or master meter,  
226 including service for common areas and facilities and vacant units, under a nonresidential utility  
227 service rate classification may, between the first day of the first month and the fifteenth day of  
228 the fourth month following the year of purchase, apply for credit or refund to the director of  
229 revenue and the director shall give credit or make refund for taxes paid on the domestic use  
230 portion of the purchase. The person making such purchases on behalf of occupants of residential  
231 apartments or condominiums shall have standing to apply to the director of revenue for such  
232 credit or refund;

- 233           (24) All sales of handicraft items made by the seller or the seller's spouse if the seller or  
234 the seller's spouse is at least sixty-five years of age, and if the total gross proceeds from such  
235 sales do not constitute a majority of the annual gross income of the seller;
- 236           (25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4071, 4081,  
237 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of revenue  
238 shall promulgate rules pursuant to chapter 536 to eliminate all state and local sales taxes on such  
239 excise taxes;
- 240           (26) Sales of fuel consumed or used in the operation of ships, barges, or waterborne  
241 vessels which are used primarily in or for the transportation of property or cargo, or the  
242 conveyance of persons for hire, on navigable rivers bordering on or located in part in this state,  
243 if such fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while  
244 it is afloat upon such river;
- 245           (27) All sales made to an interstate compact agency created pursuant to sections 70.370  
246 to 70.441 or sections 238.010 to 238.100 in the exercise of the functions and activities of such  
247 agency as provided pursuant to the compact;
- 248           (28) Computers, computer software and computer security systems purchased for use  
249 by architectural or engineering firms headquartered in this state. For the purposes of this  
250 subdivision, "headquartered in this state" means the office for the administrative management  
251 of at least four integrated facilities operated by the taxpayer is located in the state of Missouri;
- 252           (29) All livestock sales when either the seller is engaged in the growing, producing or  
253 feeding of such livestock, or the seller is engaged in the business of buying and selling, bartering  
254 or leasing of such livestock;
- 255           (30) All sales of barges which are to be used primarily in the transportation of property  
256 or cargo on interstate waterways;
- 257           (31) Electrical energy or gas, whether natural, artificial or propane, water, or other  
258 utilities which are ultimately consumed in connection with the manufacturing of cellular glass  
259 products or in any material recovery processing plant as defined in subdivision (4) of this  
260 subsection;
- 261           (32) Notwithstanding other provisions of law to the contrary, all sales of pesticides or  
262 herbicides used in the production of crops, aquaculture, livestock or poultry;
- 263           (33) Tangible personal property and utilities purchased for use or consumption directly  
264 or exclusively in the research and development of agricultural/biotechnology and plant genomics  
265 products and prescription pharmaceuticals consumed by humans or animals;
- 266           (34) All sales of grain bins for storage of grain for resale;



267 (35) All sales of feed which are developed for and used in the feeding of pets owned by  
268 a commercial breeder when such sales are made to a commercial breeder, as defined in section  
269 273.325, and licensed pursuant to sections 273.325 to 273.357;

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

284 (a) An exempt entity located in this state, if the entity is one of those entities able to issue  
285 project exemption certificates in accordance with the provisions of section 144.062; or

286 (b) An exempt entity located outside the state if the exempt entity is authorized to issue  
287 an exemption certificate to contractors in accordance with the provisions of that state's law and  
288 the applicable provisions of this section;

289 (37) All sales or other transfers of tangible personal property to a lessor who leases the  
290 property under a lease of one year or longer executed or in effect at the time of the sale or other  
291 transfer to an interstate compact agency created pursuant to sections 70.370 to 70.441 or sections  
292 238.010 to 238.100;

293 (38) Sales of tickets to any collegiate athletic championship event that is held in a facility  
294 owned or operated by a governmental authority or commission, a quasi-governmental agency,  
295 a state university or college or by the state or any political subdivision thereof, including a  
296 municipality, and that is played on a neutral site and may reasonably be played at a site located  
297 outside the state of Missouri. For purposes of this subdivision, "neutral site" means any site that  
298 is not located on the campus of a conference member institution participating in the event;

299 (39) All purchases by a sports complex authority created under section 64.920, and all  
300 sales of utilities by such authority at the authority's cost that are consumed in connection with  
301 the operation of a sports complex leased to a professional sports team;

302 (40) All materials, replacement parts, and equipment purchased for use directly upon,  
303 and for the modification, replacement, repair, and maintenance of aircraft, aircraft power plants,  
304 and aircraft accessories;

305 (41) Sales of sporting clays, wobble, skeet, and trap targets to any shooting range or  
306 similar places of business for use in the normal course of business and money received by a  
307 shooting range or similar places of business from patrons and held by a shooting range or similar  
308 place of business for redistribution to patrons at the conclusion of a shooting event;

309 (42) All sales of motor fuel, as defined in section 142.800, used in any watercraft, as  
310 defined in section 306.010;

311 (43) Any new or used aircraft sold or delivered in this state to a person who is not a  
312 resident of this state or a corporation that is not incorporated in this state, and such aircraft is not  
313 to be based in this state and shall not remain in this state more than ten business days subsequent  
314 to the last to occur of:

315 (a) The transfer of title to the aircraft to a person who is not a resident of this state or a  
316 corporation that is not incorporated in this state; or

317 (b) The date of the return to service of the aircraft in accordance with 14 CFR 91.407 for  
318 any maintenance, preventive maintenance, rebuilding, alterations, repairs, or installations that  
319 are completed contemporaneously with the transfer of title to the aircraft to a person who is not  
320 a resident of this state or a corporation that is not incorporated in this state;

321 (44) Motor vehicles registered in excess of fifty-four thousand pounds, and the trailers  
322 pulled by such motor vehicles, that are actually used in the normal course of business to haul  
323 property on the public highways of the state, and that are capable of hauling loads commensurate  
324 with the motor vehicle's registered weight; and the materials, replacement parts, and equipment  
325 purchased for use directly upon, and for the repair and maintenance or manufacture of such  
326 vehicles. For purposes of this subdivision, "motor vehicle" and "public highway" shall have the  
327 meaning as ascribed in section 390.020;

328 (45) All internet access or the use of internet access regardless of whether the tax is  
329 imposed on a provider of internet access or a buyer of internet access. For purposes of this  
330 subdivision, the following terms shall mean:

331 (a) "Direct costs", costs incurred by a governmental authority solely because of an  
332 internet service provider's use of the public right-of-way. The term shall not include costs that  
333 the governmental authority would have incurred if the internet service provider did not make  
334 such use of the public right-of-way. Direct costs shall be determined in a manner consistent with  
335 generally accepted accounting principles;

336 (b) "Internet", computer and telecommunications facilities, including equipment and  
337 operating software, that comprises the interconnected worldwide network that employ the

338 transmission control protocol or internet protocol, or any predecessor or successor protocols to  
339 that protocol, to communicate information of all kinds by wire or radio;

340 (c) "Internet access", a service that enables users to connect to the internet to access  
341 content, information, or other services without regard to whether the service is referred to as  
342 telecommunications, communications, transmission, or similar services, and without regard to  
343 whether a provider of the service is subject to regulation by the Federal Communications  
344 Commission as a common carrier under 47 U.S.C. Section 201, et seq. For purposes of this  
345 subdivision, internet access also includes: the purchase, use, or sale of communications services,  
346 including telecommunications services as defined in section 144.010, to the extent the  
347 communications services are purchased, used, or sold to provide the service described in this  
348 subdivision or to otherwise enable users to access content, information, or other services offered  
349 over the internet; services that are incidental to the provision of a service described in this  
350 subdivision, when furnished to users as part of such service, including a home page, electronic  
351 mail, and instant messaging, including voice-capable and video-capable electronic mail and  
352 instant messaging, video clips, and personal electronic storage capacity; a home page electronic  
353 mail and instant messaging, including voice-capable and video-capable electronic mail and  
354 instant messaging, video clips, and personal electronic storage capacity that are provided  
355 independently or that are not packed with internet access. As used in this subdivision, internet  
356 access does not include voice, audio, and video programming or other products and services,  
357 except services described in this paragraph or this subdivision, that use internet protocol or any  
358 successor protocol and for which there is a charge, regardless of whether the charge is separately  
359 stated or aggregated with the charge for services described in this paragraph or this subdivision;

360 (d) "Tax", any charge imposed by the state or a political subdivision of the state for the  
361 purpose of generating revenues for governmental purposes and that is not a fee imposed for a  
362 specific privilege, service, or benefit conferred, except as described as otherwise under this  
363 subdivision, or any obligation imposed on a seller to collect and to remit to the state or a political  
364 subdivision of the state any gross retail tax, sales tax, or use tax imposed on a buyer by such a  
365 governmental entity. The term tax shall not include any franchise fee or similar fee imposed or  
366 authorized under section 67.1830 or 67.2689; Section 622 or 653 of the Communications Act  
367 of 1934, 47 U.S.C. Section 542 and 47 U.S.C. Section 573; or any other fee related to obligations  
368 of telecommunications carriers under the Communications Act of 1934, 47 U.S.C. Section 151,  
369 et seq., except to the extent that:

370 a. The fee is not imposed for the purpose of recovering direct costs incurred by the  
371 franchising or other governmental authority from providing the specific privilege, service, or  
372 benefit conferred to the payer of the fee; or

b. The fee is imposed for the use of a public right-of-way based on a percentage of the service revenue, and the fee exceeds the incremental direct costs incurred by the governmental authority associated with the provision of that right-of-way to the provider of internet access service.

Nothing in this subdivision shall be interpreted as an exemption from taxes due on goods or services that were subject to tax on January 1, 2016; and

**(46) All purchases by a Missouri company of solar photovoltaic energy distributed generation systems and all purchases of supplies used directly to make improvements to such systems, provided that such systems:**

**(a) Allow for energy storage;**

**(b) Include advanced or smart meter inverter capacity; and**

**(c) Allow for utility scale projects greater than twenty megawatts.**

**For purposes of this subdivision, the term "Missouri company" shall mean any corporation or other business organization that is registered with the secretary of state, has at least one physical office located in this state, and employs at least three residents of this state in full-time positions.**

3. Any ruling, agreement, or contract, whether written or oral, express or implied, between a person and this state's executive branch, or any other state agency or department, stating, agreeing, or ruling that such person is not required to collect sales and use tax in this state despite the presence of a warehouse, distribution center, or fulfillment center in this state that is owned or operated by the person or an affiliated person shall be null and void unless it is specifically approved by a majority vote of each of the houses of the general assembly. For purposes of this subsection, an "affiliated person" means any person that is a member of the same controlled group of corporations as defined in Section 1563(a) of the Internal Revenue Code of 1986, as amended, as the vendor or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the vendor as a corporation that is a member of the same controlled group of corporations as defined in Section 1563(a) of the Internal Revenue Code, as amended.

✓