

FIRST REGULAR SESSION

HOUSE BILL NO. 935

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HEIN.

1764H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 144.030, RSMo, and to enact in lieu thereof one new section relating to sales 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Section A. Section 144.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.030, to read as follows: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

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 into foodstuffs which are to be sold ultimately in processed form at retail; or seed, limestone
19 or fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested
20 will be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed
21 form at retail; economic poisons registered pursuant to the provisions of the Missouri
22 pesticide registration ~~law~~ **act**, sections ~~[281.220]~~ **281.210** to 281.310, which are to be used
23 in connection with the growth or production of crops, fruit trees or orchards applied before,
24 during, or after planting, the crop of which when harvested will be sold at retail or will be
25 converted into foodstuffs which are to 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
28 component part or ingredient of the new personal property resulting from such
29 manufacturing, processing, compounding, mining, producing or fabricating and which new
30 personal property is intended to be sold ultimately for final use or consumption; and
31 materials, including without limitation, gases and manufactured goods, including without
32 limitation slagging materials and firebrick, which are ultimately consumed in the
33 manufacturing process by blending, reacting or interacting with or by becoming, in whole
34 or in part, component parts or ingredients of steel products intended to be sold ultimately for
35 final use or consumption;

36 (3) Materials, replacement parts and equipment purchased for use directly upon, and
37 for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling
38 stock or aircraft engaged as common carriers of persons or property;

39 (4) Replacement machinery, equipment, and parts and the materials and supplies
40 solely required for the installation or construction of such replacement machinery, equipment,
41 and parts, used directly in manufacturing, mining, fabricating or producing a product which is
42 intended to be sold ultimately for final use or consumption; and machinery and equipment,
43 and the materials and supplies required solely for the operation, installation or construction of
44 such machinery and equipment, purchased and used to establish new, or to replace or expand
45 existing, material recovery processing plants in this state. For the purposes of this
46 subdivision, a "material recovery processing plant" means a facility that has as its primary
47 purpose the recovery of materials into a usable product or a different form which is used in
48 producing a new product and shall include a facility or equipment which are used exclusively
49 for the collection of recovered materials for delivery to a material recovery processing plant
50 but shall not include motor vehicles used on highways. For purposes of this section, the terms
51 motor vehicle and highway shall have the same meaning pursuant to section 301.010. For the
52 purposes of this subdivision, subdivision (5) of this subsection, and section 144.054, as well
53 as the definition in subdivision (9) of subsection 1 of section 144.010, the term "product"
54 includes telecommunications services and the term "manufacturing" shall include the

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

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

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

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

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

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

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

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

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

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

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

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

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

125 (17) All amounts paid or charged for admission or participation or other fees paid by
126 or other charges to individuals in or for any place of amusement, entertainment or recreation,
127 games or athletic events, including museums, fairs, zoos and planetariums, owned or operated
128 by a municipality or other political subdivision where all the proceeds derived therefrom

129 benefit the municipality or other political subdivision and do not inure to any private person,
130 firm, or corporation, provided, however, that a municipality or other political subdivision may
131 enter into revenue-sharing agreements with private persons, firms, or corporations providing
132 goods or services, including management services, in or for the place of amusement,
133 entertainment or recreation, games or athletic events, and provided further that nothing in this
134 subdivision shall exempt from tax any amounts retained by any private person, firm, or
135 corporation under such revenue-sharing agreement;

136 (18) All sales of insulin, and all sales, rentals, repairs, and parts of durable medical
137 equipment, prosthetic devices, and orthopedic devices as defined on January 1, 1980, by the
138 federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965,
139 including the items specified in Section 1862(a)(12) of that act (**42 U.S.C. Section 1395y, as**
140 **amended**), and also specifically including hearing aids and hearing aid supplies and all sales
141 of drugs which may be legally dispensed by a licensed pharmacist only upon a lawful
142 prescription of a practitioner licensed to administer those items, including samples and
143 materials used to manufacture samples which may be dispensed by a practitioner authorized
144 to dispense such samples and all sales or rental of medical oxygen, home respiratory
145 equipment and accessories including parts, and hospital beds and accessories and ambulatory
146 aids including parts, and all sales or rental of manual and powered wheelchairs including
147 parts, and stairway lifts, Braille writers, electronic Braille equipment and, if purchased or
148 rented by or on behalf of a person with one or more physical or mental disabilities to enable
149 them to function more independently, all sales or rental of scooters including parts, and
150 reading machines, electronic print enlargers and magnifiers, electronic alternative and
151 augmentative communication devices, and items used solely to modify motor vehicles to
152 permit the use of such motor vehicles by individuals with disabilities or sales of over-the-
153 counter or nonprescription drugs to individuals with disabilities, and drugs required by the
154 Food and Drug Administration to meet the over-the-counter drug product labeling
155 requirements in 21 CFR 201.66, or its successor, as prescribed by a health care
156 practitioner licensed to prescribe;

157 (19) All sales made by or to religious and charitable organizations and institutions in
158 their religious, charitable or educational functions and activities and all sales made by or to all
159 elementary and secondary schools operated at public expense in their educational functions
160 and activities;

161 (20) All sales of aircraft to common carriers for storage or for use in interstate
162 commerce and all sales made by or to not-for-profit civic, social, service or fraternal
163 organizations, including fraternal organizations which have been declared tax-exempt
164 organizations pursuant to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as
165 amended, in their civic or charitable functions and activities and all sales made to

166 eleemosynary and penal institutions and industries of the state, and all sales made to any
167 private not-for-profit institution of higher education not otherwise excluded pursuant to
168 subdivision (19) of this subsection or any institution of higher education supported by public
169 funds, and all sales made to a state relief agency in the exercise of relief functions and
170 activities;

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

178 (22) All sales made to any private not-for-profit elementary or secondary school, all
179 sales of feed additives, medications or vaccines administered to livestock or poultry in the
180 production of food or fiber, all sales of pesticides used in the production of crops, livestock or
181 poultry for food or fiber, all sales of bedding used in the production of livestock or poultry for
182 food or fiber, all sales of propane or natural gas, electricity or diesel fuel used exclusively for
183 drying agricultural crops, natural gas used in the primary manufacture or processing of fuel
184 ethanol as defined in section 142.028, natural gas, propane, and electricity used by an eligible
185 new generation cooperative or an eligible new generation processing entity as defined in
186 section 348.432, and all sales of farm machinery and equipment, other than airplanes, motor
187 vehicles and trailers, and any freight charges on any exempt item. As used in this
188 subdivision, the term "feed additives" means tangible personal property which, when mixed
189 with feed for livestock or poultry, is to be used in the feeding of livestock or poultry. As used
190 in this subdivision, the term "pesticides" includes adjuvants such as crop oils, surfactants,
191 wetting agents and other assorted pesticide carriers used to improve or enhance the effect of a
192 pesticide and the foam used to mark the application of pesticides and herbicides for the
193 production of crops, livestock or poultry. As used in this subdivision, the term "farm
194 machinery and equipment" shall mean:

195 (a) New or used farm tractors and such other new or used farm machinery and
196 equipment, including utility vehicles used for any agricultural use, and repair or replacement
197 parts thereon and any accessories for and upgrades to such farm machinery and equipment
198 and rotary mowers used for any agricultural purposes. For the purposes of this subdivision,
199 "utility vehicle" shall mean any motorized vehicle manufactured and used exclusively for off-
200 highway use which is more than fifty inches but no more than eighty inches in width,
201 measured from outside of tire rim to outside of tire rim, with an unladen dry weight of three
202 thousand five hundred pounds or less, traveling on four or six wheels;

203 (b) Supplies and lubricants used exclusively, solely, and directly for producing crops,
204 raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for
205 ultimate sale at retail, including field drain tile; and

206 (c) One-half of each purchaser's purchase of diesel fuel therefor which is:

207 a. Used exclusively for agricultural purposes;

208 b. Used on land owned or leased for the purpose of producing farm products; and

209 c. Used directly in producing farm products to be sold ultimately in processed form or
210 otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold
211 ultimately in processed form at retail;

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

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

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

234 (c) Each person making domestic use purchases of services or property and who uses
235 any portion of the services or property so purchased for a nondomestic use shall, by the
236 fifteenth day of the fourth month following the year of purchase, and without assessment,
237 notice or demand, file a return and pay sales tax on that portion of nondomestic purchases.
238 Each person making nondomestic purchases of services or property and who uses any portion
239 of the services or property so purchased for domestic use, and each person making domestic

240 purchases on behalf of occupants of residential apartments or condominiums through a single
241 or master meter, including service for common areas and facilities and vacant units, under a
242 nonresidential utility service rate classification may, between the first day of the first month
243 and the fifteenth day of the fourth month following the year of purchase, apply for credit or
244 refund to the director of revenue and the director shall give credit or make refund for taxes
245 paid on the domestic use portion of the purchase. The person making such purchases on
246 behalf of occupants of residential apartments or condominiums shall have standing to apply to
247 the director of revenue for such credit or refund;

248 (24) All sales of handicraft items made by the seller or the seller's spouse if the seller
249 or the seller's spouse is at least sixty-five years of age, and if the total gross proceeds from
250 such sales do not constitute a majority of the annual gross income of the seller;

251 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4071, 4081,
252 ~~[4091,]~~ 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of
253 revenue shall promulgate rules pursuant to chapter 536 to eliminate all state and local sales
254 taxes on such excise taxes;

255 (26) Sales of fuel consumed or used in the operation of ships, barges, or waterborne
256 vessels which are used primarily in or for the transportation of property or cargo, or the
257 conveyance of persons for hire, on navigable rivers bordering on or located in part in this
258 state, if such fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel
259 while it is afloat upon such river;

260 (27) All sales made to an interstate compact agency created pursuant to sections
261 70.370 to 70.441 or sections 238.010 to 238.100 in the exercise of the functions and activities
262 of such agency as provided pursuant to the compact;

263 (28) Computers, computer software and computer security systems purchased for use
264 by architectural or engineering firms headquartered in this state. For the purposes of this
265 subdivision, "headquartered in this state" means the office for the administrative management
266 of at least four integrated facilities operated by the taxpayer is located in the state of Missouri;

267 (29) All livestock sales when either the seller is engaged in the growing, producing or
268 feeding of such livestock, or the seller is engaged in the business of buying and selling,
269 bartering or leasing of such livestock;

270 (30) All sales of barges which are to be used primarily in the transportation of
271 property or cargo on interstate waterways;

272 (31) Electrical energy or gas, whether natural, artificial or propane, water, or other
273 utilities which are ultimately consumed in connection with the manufacturing of cellular glass
274 products or in any material recovery processing plant as defined in subdivision (4) of this
275 subsection;

276 (32) Notwithstanding other provisions of law to the contrary, all sales of pesticides or
277 herbicides used in the production of crops, aquaculture, livestock or poultry;

278 (33) Tangible personal property and utilities purchased for use or consumption
279 directly or exclusively in the research and development of agricultural/biotechnology and
280 plant genomics products and prescription pharmaceuticals consumed by humans or animals;

281 (34) All sales of grain bins for storage of grain for resale;

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

285 (36) All purchases by a contractor on behalf of an entity located in another state,
286 provided that the entity is authorized to issue a certificate of exemption for purchases to a
287 contractor under the provisions of that state's laws. For purposes of this subdivision, the term
288 "certificate of exemption" shall mean any document evidencing that the entity is exempt from
289 sales and use taxes on purchases pursuant to the laws of the state in which the entity is
290 located. Any contractor making purchases on behalf of such entity shall maintain a copy of
291 the entity's exemption certificate as evidence of the exemption. If the exemption certificate
292 issued by the exempt entity to the contractor is later determined by the director of revenue to
293 be invalid for any reason and the contractor has accepted the certificate in good faith, neither
294 the contractor or the exempt entity shall be liable for the payment of any taxes, interest and
295 penalty due as the result of use of the invalid exemption certificate. Materials shall be exempt
296 from all state and local sales and use taxes when purchased by a contractor for the purpose of
297 fabricating tangible personal property which is used in fulfilling a contract for the purpose of
298 constructing, repairing or remodeling facilities for the following:

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

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

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

308 (38) Sales of tickets to any collegiate athletic championship event that is held in a
309 facility owned or operated by a governmental authority or commission, a quasi-governmental
310 agency, a state university or college or by the state or any political subdivision thereof,
311 including a municipality, and that is played on a neutral site and may reasonably be played at
312 a site located outside the state of Missouri. For purposes of this subdivision, "neutral site"

313 means any site that is not located on the campus of a conference member institution
314 participating in the event;

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

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

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

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

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

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

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

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

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

347 (a) "Direct costs", costs incurred by a governmental authority solely because of an
348 internet service provider's use of the public right-of-way. The term shall not include costs that
349 the governmental authority would have incurred if the internet service provider did not make

350 such use of the public right-of-way. Direct costs shall be determined in a manner consistent
351 with generally accepted accounting principles;

352 (b) "Internet", computer and telecommunications facilities, including equipment and
353 operating software, that comprises the interconnected worldwide network that employ the
354 transmission control protocol or internet protocol, or any predecessor or successor protocols
355 to that protocol, to communicate information of all kinds by wire or radio;

356 (c) "Internet access", a service that enables users to connect to the internet to access
357 content, information, or other services without regard to whether the service is referred to as
358 telecommunications, communications, transmission, or similar services, and without regard to
359 whether a provider of the service is subject to regulation by the Federal Communications
360 Commission as a common carrier under 47 U.S.C. Section 201, et seq. For purposes of this
361 subdivision, internet access also includes: the purchase, use, or sale of communications
362 services, including telecommunications services as defined in section 144.010, to the extent
363 the communications services are purchased, used, or sold to provide the service described in
364 this subdivision or to otherwise enable users to access content, information, or other services
365 offered over the internet; services that are incidental to the provision of a service described in
366 this subdivision, when furnished to users as part of such service, including a home page,
367 electronic mail, and instant messaging, including voice-capable and video-capable electronic
368 mail and instant messaging, video clips, and personal electronic storage capacity; a home
369 page electronic mail and instant messaging, including voice-capable and video-capable
370 electronic mail and instant messaging, video clips, and personal electronic storage capacity
371 that are provided independently or that are not packed with internet access. As used in this
372 subdivision, internet access does not include voice, audio, and video programming or other
373 products and services, except services described in this paragraph or this subdivision, that use
374 internet protocol or any successor protocol and for which there is a charge, regardless of
375 whether the charge is separately stated or aggregated with the charge for services described in
376 this paragraph or this subdivision;

377 (d) "Tax", any charge imposed by the state or a political subdivision of the state for
378 the purpose of generating revenues for governmental purposes and that is not a fee imposed
379 for a specific privilege, service, or benefit conferred, except as described as otherwise under
380 this subdivision, or any obligation imposed on a seller to collect and to remit to the state or a
381 political subdivision of the state any gross retail tax, sales tax, or use tax imposed on a buyer
382 by such a governmental entity. The term tax shall not include any franchise fee or similar fee
383 imposed or authorized under sections 67.1830 to 67.1846 or section 67.2689; Section 622 or
384 653 of the Communications Act of 1934, 47 U.S.C. Section 542 and 47 U.S.C. Section 573;
385 or any other fee related to obligations of telecommunications carriers under the
386 Communications Act of 1934, 47 U.S.C. Section 151, et seq., except to the extent that:

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

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

394

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

397 (46) All purchases by a company of solar photovoltaic energy systems, components
398 used to construct a solar photovoltaic energy system, and all purchases of materials and
399 supplies used directly to construct or make improvements to such systems, provided that such
400 systems:

401 (a) Are sold or leased to an end user; or

402 (b) Are used to produce, collect and transmit electricity for resale or retail;

403 (47) **All sales of diapers and infant formula. For the purposes of this**
404 **subdivision, the following terms shall mean:**

405 (a) **"Diapers", absorbent garments worn by infants or toddlers who are not**
406 **toilet-trained or by individuals who are incapable of controlling their bladder or bowel**
407 **movements; and**

408 (b) **"Infant formula", the same meaning as defined under Section 201(z) of the**
409 **Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C. 321(z)).**

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

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