

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]

SENATE BILL NO. 1025

98TH GENERAL ASSEMBLY
2016

4448S.03T

AN ACT

To repeal sections 144.010, 144.018, and 144.020, RSMo, and to enact in lieu thereof three new sections relating to the taxation of instructional classes.

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

Section A. Sections 144.010, 144.018, and 144.020, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 144.010,
3 144.018, and 144.020, to read as follows:

144.010. 1. The following words, terms, and phrases when used in
2 sections 144.010 to 144.525 have the meanings ascribed to them in this section,
3 except when the context indicates a different meaning:

4 (1) "Admission" includes seats and tables, reserved or otherwise, and
5 other similar accommodations and charges made therefor and amount paid for
6 admission, exclusive of any admission tax imposed by the federal government or
7 by sections 144.010 to 144.525;

8 (2) "Business" includes any activity engaged in by any person, or caused
9 to be engaged in by him, with the object of gain, benefit or advantage, either
10 direct or indirect, and the classification of which business is of such character as
11 to be subject to the terms of sections 144.010 to 144.525. A person is "engaging
12 in business" in this state for purposes of sections 144.010 to 144.525 if such
13 person "engages in business in this state" or "maintains a place of business in
14 this state" under section 144.605. The isolated or occasional sale of tangible
15 personal property, service, substance, or thing, by a person not engaged in such
16 business, does not constitute engaging in business within the meaning of sections
17 144.010 to 144.525 unless the total amount of the gross receipts from such sales,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 exclusive of receipts from the sale of tangible personal property by persons which
19 property is sold in the course of the partial or complete liquidation of a
20 household, farm or nonbusiness enterprise, exceeds three thousand dollars in any
21 calendar year. The provisions of this subdivision shall not be construed to make
22 any sale of property which is exempt from sales tax or use tax on June 1, 1977,
23 subject to that tax thereafter;

24 (3) "Captive wildlife", includes but is not limited to exotic partridges, gray
25 partridge, northern bobwhite quail, ring-necked pheasant, captive waterfowl,
26 captive white-tailed deer, captive elk, and captive furbearers held under permit
27 issued by the Missouri Department of conservation for hunting purposes. The
28 provisions of this subdivision shall not apply to sales tax on a harvested animal;

29 (4) "Gross receipts", except as provided in section 144.012, means the total
30 amount of the sale price of the sales at retail including any services other than
31 charges incident to the extension of credit that are a part of such sales made by
32 the businesses herein referred to, capable of being valued in money, whether
33 received in money or otherwise; except that, the term "gross receipts" shall not
34 include the sale price of property returned by customers when the full sale price
35 thereof is refunded either in cash or by credit. In determining any tax due under
36 sections 144.010 to 144.525 on the gross receipts, charges incident to the
37 extension of credit shall be specifically exempted. For the purposes of sections
38 144.010 to 144.525 the total amount of the sale price above mentioned shall be
39 deemed to be the amount received. It shall also include the lease or rental
40 consideration where the right to continuous possession or use of any article of
41 tangible personal property is granted under a lease or contract and such transfer
42 of possession would be taxable if outright sale were made and, in such cases, the
43 same shall be taxable as if outright sale were made and considered as a sale of
44 such article, and the tax shall be computed and paid by the lessee upon the
45 rentals paid;

46 (5) **"Instructional class", includes any class, lesson, or instruction**
47 **intended or used for teaching;**

48 (6) "Livestock", cattle, calves, sheep, swine, ratite birds, including but not
49 limited to, ostrich and emu, aquatic products as defined in section 277.024,
50 llamas, alpaca, buffalo, elk documented as obtained from a legal source and not
51 from the wild, goats, horses, other equine, or rabbits raised in confinement for
52 human consumption;

53 [(6)] (7) "Motor vehicle leasing company" shall be a company obtaining

54 a permit from the director of revenue to operate as a motor vehicle leasing
55 company. Not all persons renting or leasing trailers or motor vehicles need to
56 obtain such a permit; however, no person failing to obtain such a permit may
57 avail itself of the optional tax provisions of subsection 5 of section 144.070, as
58 hereinafter provided;

59 [(7)] (8) "Person" includes any individual, firm, copartnership, joint
60 adventure, association, corporation, municipal or private, and whether organized
61 for profit or not, state, county, political subdivision, state department,
62 commission, board, bureau or agency, except the state transportation department,
63 estate, trust, business trust, receiver or trustee appointed by the state or federal
64 court, syndicate, or any other group or combination acting as a unit, and the
65 plural as well as the singular number;

66 [(8)] (9) "Purchaser" means a person who purchases tangible personal
67 property or to whom are rendered services, receipts from which are taxable under
68 sections 144.010 to 144.525;

69 [(9)] (10) "Research or experimentation activities" are the development
70 of an experimental or pilot model, plant process, formula, invention or similar
71 property, and the improvement of existing property of such type. Research or
72 experimentation activities do not include activities such as ordinary testing or
73 inspection of materials or products for quality control, efficiency surveys,
74 advertising promotions or research in connection with literary, historical or
75 similar projects;

76 [(10)] (11) "Sale" or "sales" includes installment and credit sales, and the
77 exchange of properties as well as the sale thereof for money, every closed
78 transaction constituting a sale, and means any transfer, exchange or barter,
79 conditional or otherwise, in any manner or by any means whatsoever, of tangible
80 personal property for valuable consideration and the rendering, furnishing or
81 selling for a valuable consideration any of the substances, things and services
82 herein designated and defined as taxable under the terms of sections 144.010 to
83 144.525;

84 [(11)] (12) "Sale at retail" means any transfer made by any person
85 engaged in business as defined herein of the ownership of, or title to, tangible
86 personal property to the purchaser, for use or consumption and not for resale in
87 any form as tangible personal property, for a valuable consideration; except that,
88 for the purposes of sections 144.010 to 144.525 and the tax imposed thereby: (i)
89 purchases of tangible personal property made by duly licensed physicians,

90 dentists, optometrists and veterinarians and used in the practice of their
91 professions shall be deemed to be purchases for use or consumption and not for
92 resale; and (ii) the selling of computer printouts, computer output or microfilm
93 or microfiche and computer-assisted photo compositions to a purchaser to enable
94 the purchaser to obtain for his or her own use the desired information contained
95 in such computer printouts, computer output on microfilm or microfiche and
96 computer-assisted photo compositions shall be considered as the sale of a service
97 and not as the sale of tangible personal property. Where necessary to conform to
98 the context of sections 144.010 to 144.525 and the tax imposed thereby, the term
99 "sale at retail" shall be construed to embrace:

100 (a) Sales of admission tickets, cash admissions, charges and fees to or in
101 places of amusement, entertainment and recreation, games and athletic events,
102 **except amounts paid for any instructional class;**

103 (b) Sales of electricity, electrical current, water and gas, natural or
104 artificial, to domestic, commercial or industrial consumers;

105 (c) Sales of local and long distance telecommunications service to
106 telecommunications subscribers and to others through equipment of
107 telecommunications subscribers for the transmission of messages and
108 conversations, and the sale, rental or leasing of all equipment or services
109 pertaining or incidental thereto;

110 (d) Sales of service for transmission of messages by telegraph companies;

111 (e) Sales or charges for all rooms, meals and drinks furnished at any
112 hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist
113 camp, tourist cabin, or other place in which rooms, meals or drinks are regularly
114 served to the public;

115 (f) Sales of tickets by every person operating a railroad, sleeping car,
116 dining car, express car, boat, airplane, and such buses and trucks as are licensed
117 by the division of motor carrier and railroad safety of the department of economic
118 development of Missouri, engaged in the transportation of persons for hire;

119 [(12)] (13) "Seller" means a person selling or furnishing tangible personal
120 property or rendering services, on the receipts from which a tax is imposed
121 pursuant to section 144.020;

122 [(13)] (14) The noun "tax" means either the tax payable by the purchaser
123 of a commodity or service subject to tax, or the aggregate amount of taxes due
124 from the vendor of such commodities or services during the period for which he
125 or she is required to report his or her collections, as the context may require;

126 [(14)] **(15)** "Telecommunications service", for the purpose of this chapter,
127 the transmission of information by wire, radio, optical cable, coaxial cable,
128 electronic impulses, or other similar means. As used in this definition,
129 "information" means knowledge or intelligence represented by any form of
130 writing, signs, signals, pictures, sounds, or any other
131 symbols. Telecommunications service does not include the following if such
132 services are separately stated on the customer's bill or on records of the seller
133 maintained in the ordinary course of business:

134 (a) Access to the internet, access to interactive computer services or
135 electronic publishing services, except the amount paid for the telecommunications
136 service used to provide such access;

137 (b) Answering services and one-way paging services;

138 (c) Private mobile radio services which are not two-way commercial mobile
139 radio services such as wireless telephone, personal communications services or
140 enhanced specialized mobile radio services as defined pursuant to federal law; or

141 (d) Cable or satellite television or music services; and

142 [(15)] **(16)** "Product which is intended to be sold ultimately for final use
143 or consumption" means tangible personal property, or any service that is subject
144 to state or local sales or use taxes, or any tax that is substantially equivalent
145 thereto, in this state or any other state.

146 2. For purposes of the taxes imposed under sections 144.010 to 144.525,
147 and any other provisions of law pertaining to sales or use taxes which incorporate
148 the provisions of sections 144.010 to 144.525 by reference, the term
149 "manufactured homes" shall have the same meaning given it in section 700.010.

150 3. Sections 144.010 to 144.525 may be known and quoted as the "Sales
151 Tax Law".

144.018. 1. Notwithstanding any other provision of law to the contrary,
2 except as provided under subsection 2 or 3 of this section, when a purchase of
3 tangible personal property or service subject to tax is made for the purpose of
4 resale, such purchase shall be either exempt or excluded under this chapter if the
5 subsequent sale is:

6 (1) Subject to a tax in this or any other state;

7 (2) For resale;

8 (3) Excluded from tax under this chapter;

9 (4) Subject to tax but exempt under this chapter; or

10 (5) Exempt from the sales tax laws of another state, if the subsequent sale

11 is in such other state. The purchase of tangible personal property by a taxpayer
12 shall not be deemed to be for resale if such property is used or consumed by the
13 taxpayer in providing a service on which tax is not imposed by subsection 1 of
14 section 144.020, except purchases made in fulfillment of any obligation under a
15 defense contract with the United States government.

16 2. For purposes of subdivision (2) of subsection 1 of section 144.020, a
17 place of amusement, entertainment or recreation, including games or athletic
18 events, shall remit tax on the amount paid for admissions or seating
19 accommodations, or fees paid to, or in such place of amusement, entertainment
20 or recreation, **except amounts paid for any instructional class**. Any
21 subsequent sale of such admissions or seating accommodations shall not be
22 subject to tax if the initial sale was an arms length transaction for fair market
23 value with an unaffiliated entity. If the sale of such admissions or seating
24 accommodations is exempt or excluded from payment of sales and use taxes, the
25 provisions of this subsection shall not require the place of amusement,
26 entertainment, or recreation to remit tax on that sale.

27 3. For purposes of subdivision (6) of subsection 1 of section 144.020, a
28 hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist
29 cabin, tourist camp, or other place in which rooms, meals, or drinks are regularly
30 served to the public shall remit tax on the amount of sales or charges for all
31 rooms, meals, and drinks furnished at such hotel, motel, tavern, inn, restaurant,
32 eating house, drugstore, dining car, tourist cabin, tourist camp, or other place in
33 which rooms, meals, or drinks are regularly served to the public. Any subsequent
34 sale of such rooms, meals, or drinks shall not be subject to tax if the initial sale
35 was an arms length transaction for fair market value with an unaffiliated entity.
36 If the sale of such rooms, meals, or drinks is exempt or excluded from payment
37 of sales and use taxes, the provisions of this subsection shall not require the
38 hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist
39 cabin, tourist camp, or other place in which rooms, meals, or drinks are regularly
40 served to the public to remit tax on that sale.

41 4. The provisions of this section are intended to reject and abrogate
42 earlier case law interpretations of the state's sales and use tax law with regard
43 to sales for resale as extended in *Music City Centre Management, LLC v. Director*
44 *of Revenue*, 295 S.W.3d 465, (Mo. 2009) and *ICC Management, Inc. v. Director of*
45 *Revenue*, 290 S.W.3d 699, (Mo. 2009). The provisions of this section are intended
46 to clarify the exemption or exclusion of purchases for resale from sales and use

47 taxes as originally enacted in this chapter.

144.020. 1. A tax is hereby levied and imposed for the privilege of titling
2 new and used motor vehicles, trailers, boats, and outboard motors purchased or
3 acquired for use on the highways or waters of this state which are required to be
4 titled under the laws of the state of Missouri and, except as provided in
5 subdivision (9) of this subsection, upon all sellers for the privilege of engaging in
6 the business of selling tangible personal property or rendering taxable service at
7 retail in this state. The rate of tax shall be as follows:

8 (1) Upon every retail sale in this state of tangible personal property,
9 excluding motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats and
10 outboard motors required to be titled under the laws of the state of Missouri and
11 subject to tax under subdivision (9) of this subsection, a tax equivalent to four
12 percent of the purchase price paid or charged, or in case such sale involves the
13 exchange of property, a tax equivalent to four percent of the consideration paid
14 or charged, including the fair market value of the property exchanged at the time
15 and place of the exchange, except as otherwise provided in section 144.025;

16 (2) A tax equivalent to four percent of the amount paid for admission and
17 seating accommodations, or fees paid to, or in any place of amusement,
18 entertainment or recreation, games and athletic events, **except amounts paid**
19 **for any instructional class;**

20 (3) A tax equivalent to four percent of the basic rate paid or charged on
21 all sales of electricity or electrical current, water and gas, natural or artificial, to
22 domestic, commercial or industrial consumers;

23 (4) A tax equivalent to four percent on the basic rate paid or charged on
24 all sales of local and long distance telecommunications service to
25 telecommunications subscribers and to others through equipment of
26 telecommunications subscribers for the transmission of messages and
27 conversations and upon the sale, rental or leasing of all equipment or services
28 pertaining or incidental thereto; except that, the payment made by
29 telecommunications subscribers or others, pursuant to section 144.060, and any
30 amounts paid for access to the internet or interactive computer services shall not
31 be considered as amounts paid for telecommunications services;

32 (5) A tax equivalent to four percent of the basic rate paid or charged for
33 all sales of services for transmission of messages of telegraph companies;

34 (6) A tax equivalent to four percent on the amount of sales or charges for
35 all rooms, meals and drinks furnished at any hotel, motel, tavern, inn,

36 restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp or
37 other place in which rooms, meals or drinks are regularly served to the
38 public. The tax imposed under this subdivision shall not apply to any automatic
39 mandatory gratuity for a large group imposed by a restaurant when such gratuity
40 is reported as employee tip income and the restaurant withholds income tax
41 under section 143.191 on such gratuity;

42 (7) A tax equivalent to four percent of the amount paid or charged for
43 intrastate tickets by every person operating a railroad, sleeping car, dining car,
44 express car, boat, airplane and such buses and trucks as are licensed by the
45 division of motor carrier and railroad safety of the department of economic
46 development of Missouri, engaged in the transportation of persons for hire;

47 (8) A tax equivalent to four percent of the amount paid or charged for
48 rental or lease of tangible personal property, provided that if the lessor or renter
49 of any tangible personal property had previously purchased the property under
50 the conditions of sale at retail or leased or rented the property and the tax was
51 paid at the time of purchase, lease or rental, the lessor, sublessor, renter or
52 subrenter shall not apply or collect the tax on the subsequent lease, sublease,
53 rental or subrental receipts from that property. The purchase, rental or lease of
54 motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats, and outboard
55 motors shall be taxed and the tax paid as provided in this section and section
56 144.070. In no event shall the rental or lease of boats and outboard motors be
57 considered a sale, charge, or fee to, for or in places of amusement, entertainment
58 or recreation nor shall any such rental or lease be subject to any tax imposed to,
59 for, or in such places of amusement, entertainment or recreation. Rental and
60 leased boats or outboard motors shall be taxed under the provisions of the sales
61 tax laws as provided under such laws for motor vehicles and trailers. Tangible
62 personal property which is exempt from the sales or use tax under section
63 144.030 upon a sale thereof is likewise exempt from the sales or use tax upon the
64 lease or rental thereof;

65 (9) A tax equivalent to four percent of the purchase price, as defined in
66 section 144.070, of new and used motor vehicles, trailers, boats, and outboard
67 motors purchased or acquired for use on the highways or waters of this state
68 which are required to be registered under the laws of the state of Missouri. This
69 tax is imposed on the person titling such property, and shall be paid according
70 to the procedures in section 144.440.

71 2. All tickets sold which are sold under the provisions of sections 144.010

72 to 144.525 which are subject to the sales tax shall have printed, stamped or
73 otherwise endorsed thereon, the words "This ticket is subject to a sales tax."

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Bill

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