

FIRST REGULAR SESSION

SENATE BILL NO. 207

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GROSS.

Pre-filed December 28, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0124S.02I

AN ACT

To repeal section 144.062, RSMo, and to enact in lieu thereof one new section relating to sales tax exemption for highway construction materials.

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

Section A. Section 144.062, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 144.062, to read as follows:

144.062. 1. With respect to exempt sales at retail of tangible personal
2 property and materials for the purpose of constructing, repairing or remodeling
3 facilities for:

4 (1) A county, other political subdivision or instrumentality thereof exempt
5 from taxation under subdivision (10) of section 39 of article III of the Constitution
6 of Missouri; or

7 (2) An organization sales to which are exempt from taxation under the
8 provisions of subdivision (19) of subsection 2 of section 144.030; or

9 (3) Any institution of higher education supported by public funds or any
10 private not-for-profit institution of higher education, exempt from taxation under
11 subdivision (20) of subsection 2 of section 144.030; or

12 (4) Any private not-for-profit elementary or secondary school exempt from
13 taxation under subdivision (22) of subsection 2 of section 144.030; **or**

14 (5) **The department of transportation or the state highways and**
15 **transportation commission**, hereinafter collectively referred to as exempt
16 entities, such exemptions shall be allowed for such purchases if the purchases are
17 related to the entities' exempt functions and activities. In addition, the sales
18 shall not be rendered nonexempt nor shall any material supplier or contractor be
19 obligated to pay, collect or remit sales tax with respect to such purchases made
20 by or on behalf of an exempt entity due to such purchases being billed to or paid

21 for by a contractor or the exempt entity contracting with any entity to render any
22 services in relation to such purchases, including but not limited to selection of
23 materials, ordering, pickup, delivery, approval on delivery, taking of delivery,
24 transportation, storage, assumption of risk of loss to materials or providing
25 warranties on materials as specified by contract, use of materials or other
26 purchases for construction of the building or other facility, providing labor,
27 management services, administrative services, design or technical services or
28 advice to the exempt entity, whether or not the contractor or other entity
29 exercises dominion or control in any other manner over the materials in
30 conjunction with services or labor provided to the exempt entity.

31 2. When any exempt entity contracts for the purpose of constructing,
32 repairing or remodeling facilities, and purchases of tangible personal property
33 and materials to be incorporated into or consumed in the construction of the
34 project are to be made on a tax-exempt basis, such entity shall furnish to the
35 contractor an exemption certificate authorizing such purchases for the
36 construction, repair or remodeling project. The form and content of such project
37 exemption certificate shall be approved by the director of revenue. The project
38 exemption certificate shall include but not be limited to:

39 (1) The exempt entity's name, address, Missouri tax identification number
40 and signature of authorized representative;

41 (2) The project location, description, and unique identification number;

42 (3) The date the contract is entered into, which is the earliest date
43 materials may be purchased for the project on a tax-exempt basis;

44 (4) The estimated project completion date; and

45 (5) The certificate expiration date.

46 Such certificate is renewable for a given project at the option of the exempt
47 entity, only for the purpose of revising the certificate expiration date as necessary
48 to complete the project.

49 3. The contractor shall furnish the certificate prescribed in subsection 2
50 of this section to all subcontractors, and any contractor purchasing materials
51 shall present such certificate to all material suppliers as authorization to
52 purchase, on behalf of the exempt entity, all tangible personal property and
53 materials to be incorporated into or consumed in the construction of that project
54 and no other on a tax-exempt basis. Such suppliers shall execute to the
55 purchasing contractor invoices bearing the name of the exempt entity and the
56 project identification number. Nothing in this section shall be deemed to exempt

57 the purchase of any construction machinery, equipment or tools used in
58 constructing, repairing or remodeling facilities for the exempt entity. All invoices
59 for all personal property and materials purchased under a project exemption
60 certificate shall be retained by the purchasing contractor for a period of five years
61 and shall be subject to audit by the director of revenue.

62 4. Any excess resalable tangible personal property or materials which
63 were purchased for the project by a contractor under a project exemption
64 certificate but which were not incorporated into or consumed in the construction
65 of the project shall either be returned to the supplier for credit or the appropriate
66 sales or use tax on such property or materials shall be reported on a
67 return and paid by such contractor not later than the due date of the contractor's
68 Missouri sales or use tax return following the month in which it was determined
69 that the materials were not to be used in the project.

70 5. No contractor or material supplier shall, upon audit, be required to pay
71 tax on tangible personal property and materials incorporated into or consumed
72 in the construction of the project, due to the failure of the exempt entity to revise
73 the certificate expiration date as necessary to complete any work required by the
74 contract. If it is determined that tax is owed on such property and materials due
75 to the failure of the exempt entity to revise such certificate expiration date, the
76 exempt entity shall be liable for the tax owed.

77 6. If an entity issues exemption certificates for the purchase of tangible
78 personal property and materials which are incorporated into or consumed in the
79 construction of its project and such entity is found not to have had the authority
80 granted by this section to issue such exemption certificates, then such entity shall
81 be liable for the tax owed on such personal property and materials. In addition,
82 if an entity which does have the authority granted by this section to issue
83 exemption certificates issues such certificates for the purchase of tangible
84 personal property and materials which are incorporated into or consumed in the
85 construction of a project, or part of a project, which is found not to be related to
86 such entity's exempt functions and activities, then such entity shall be liable for
87 the tax owed on such personal property and materials.

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