

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 627
89TH GENERAL ASSEMBLY
1998

L2564.18T

AN ACT

To repeal sections 144.010 and 144.020, RSMo Supp. 1997, relating to utility taxation, and to enact in lieu thereof eight new sections relating to the same subject, with an emergency clause.

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

Section A. Sections 144.010 and 144.020, RSMo Supp. 1997, are repealed and eight new sections enacted in lieu thereof, to be known as sections 144.010, 144.020, 393.297, 393.298, 393.299, 393.300, 393.301 and 393.302, to read as follows:

144.010. 1. The following words, terms, and phrases when used in sections 144.010 to [144.510] **144.525** have the meanings ascribed to them in this section, except when the context indicates a different meaning:

(1) "Admission" includes seats and tables, reserved or otherwise, and other similar accommodations and charges made therefor and amount paid for admission, exclusive of any admission tax imposed by the federal government or by sections 144.010 to [144.510] **144.525**;

(2) "Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect, and the classification of which business is of such character as to be subject to the terms of sections 144.010 to [144.510] **144.525**. The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business, does not constitute engaging in business within the meaning of sections 144.010 to [144.510] **144.525** unless the total amount of

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

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

(3) "Gross receipts", except as provided in section 144.012, means the total amount of the sale price of the sales at retail including any services other than charges incident to the extension of credit that are a part of such sales made by the businesses herein referred to, capable of being valued in money, whether received in money or otherwise; except that, the term "gross receipts" shall not include the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. In determining any tax due under sections 144.010 to [144.510] **144.525** on the gross receipts, charges incident to the extension of credit shall be specifically exempted. For the purposes of sections 144.010 to [144.510] **144.525** the total amount of the sale price above mentioned shall be deemed to be the amount received. It shall also include the lease or rental consideration where the right to continuous possession or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if outright sale were made and, in such cases, the same shall be taxable as if outright sale were made and considered as a sale of such article, and the tax shall be computed and paid by the lessee upon the rentals paid;

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

(5) "Motor vehicle leasing company" shall be a company obtaining a permit from the director of revenue to operate as a motor vehicle leasing company. Not all persons renting or leasing trailers or motor vehicles need to obtain such a permit; however, no person failing to obtain such a permit may avail itself of the optional tax provisions of subsection 5 of section 144.070, as hereinafter provided;

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

(7) "Purchaser" means a person who purchases tangible personal property or to whom are rendered services, receipts from which are taxable under sections 144.010 to [144.510] **144.525**;

(8) "Sale" or "sales" includes installment and credit sales, and the exchange of properties

as well as the sale thereof for money, every closed transaction constituting a sale, and means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for valuable consideration and the rendering, furnishing or selling for a valuable consideration any of the substances, things and services herein designated and defined as taxable under the terms of sections 144.010 to [144.510] **144.525**;

(9) "Sale at retail" means any transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration; except that, for the purposes of sections 144.010 to [144.510] **144.525** and the tax imposed thereby: (i) purchases of tangible personal property made by duly licensed physicians, dentists, optometrists and veterinarians and used in the practice of their professions shall be deemed to be purchases for use or consumption and not for resale; and (ii) the selling of computer printouts, computer output or microfilm or microfiche and computer assisted photo compositions to a purchaser to enable the purchaser to obtain for his own use the desired information contained in such computer printouts, computer output on microfilm or microfiche and computer assisted photo compositions shall be considered as the sale of a service and not as the sale of tangible personal property. Where necessary to conform to the context of sections 144.010 to [144.510] **144.525** and the tax imposed thereby, the term "sale at retail" shall be construed to embrace:

(a) Sales of admission tickets, cash admissions, charges and fees to or in places of amusement, entertainment and recreation, games and athletic events;

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

(c) Sales of **local and long distance telecommunications** service to [telephone] **telecommunications** subscribers and to others through equipment of [telephone] **telecommunications** subscribers for the transmission of messages and conversations, [both local or long distance.] and the sale, rental or leasing of all equipment or services pertaining or incidental thereto;

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

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

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

(10) "Seller" means a person selling or furnishing tangible personal property or rendering services, on the receipts from which a tax is imposed under section 144.020;

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

(12) "Telecommunications service", for the purpose of chapter 144, the transmission of information by wire, radio, optical cable, coaxial cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include the following if such services are separately stated on the customer's bill:

(a) Access to the Internet, access to interactive computer services or electronic publishing services, except the amount paid for the telecommunication service used to provide such access;

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

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

(d) Cable or satellite television or music services.

2. For purposes of the taxes imposed under sections 144.010 to [144.510] **144.525**, and any other provisions of law pertaining to sales or use taxes which incorporate the provisions of sections 144.010 to [144.510] **144.525** by reference, the term "manufactured homes" shall have the same meaning given it in section 700.010, RSMo.

3. Sections 144.010 to [144.510] **144.525** may be known and quoted as the "Sales Tax Law".

144.020. 1. A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. The rate of tax shall be as follows:

(1) Upon every retail sale in this state of tangible personal property, a tax equivalent to four percent of the purchase price paid or charged, or in case such sale involves the exchange of property, a tax equivalent to four percent of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, except as otherwise provided in section 144.025;

(2) A tax equivalent to four percent of the amount paid for admission and seating accommodations, or fees paid to, or in any place of amusement, entertainment or recreation, games and athletic events;

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

(4) A tax equivalent to four percent on the basic rate paid or charged on all sales of **local and long distance telecommunications** service to [telephone] **telecommunications** subscribers and to others through equipment of [telephone] **telecommunications** subscribers for the transmission of messages and conversations[, both local and long distance,] and upon the sale, rental or leasing of all equipment or services pertaining or incidental thereto; except that, the payment made by [telephone] **telecommunications** subscribers or others, pursuant to section 144.060, **and any amounts paid for access to the Internet or interactive computer services** shall not be considered as amounts paid for [communication or telephone] **telecommunications** services [or equipment];

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

(6) A tax equivalent to four percent on the amount of sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp or other place in which rooms, meals or drinks are regularly served to the public;

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

(8) A tax equivalent to four percent of the amount paid or charged for rental or lease of tangible personal property, provided that if the lessor or renter of any tangible personal property had previously purchased the property under the conditions of "sale at retail" as defined in subdivision (8) of section 144.010 or leased or rented the property and the tax was paid at the time of purchase, lease or rental, the lessor, sublessor, renter or subrenter shall not apply or collect the tax on the subsequent lease, sublease, rental or subrental receipts from that property. The purchase or use of motor vehicles, trailers, boats, and outboard motors shall be taxed and the tax paid as provided in sections 144.070 and 144.440. No tax shall be collected on the rental or lease of motor vehicles, trailers, boats, and outboard motors, except as provided in sections 144.070 and 144.440. In no event shall the rental or lease of boats and outboard motors be considered a sale, charge, or fee to, for or in places of amusement, entertainment or recreation nor shall any such rental or lease be subject to any tax imposed to, for, or in such places of amusement, entertainment or recreation. Rental and leased boats or outboard motors shall be taxed under the provisions of the sales tax laws as provided under such laws for motor vehicles and trailers. Tangible personal property which is exempt from the sales or use tax under section 144.030 upon a sale thereof is likewise exempt from the sales or use tax upon the lease or rental thereof.

2. All tickets sold which are sold under the provisions of sections 144.010 to [144.510]

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

393.297. 1. It is the intent of the general assembly through the passage of this act:

(1) To maintain a fair and equitable tax structure and to preserve the local tax base by requiring all persons who provide electricity or gas service to pay an equitable share; and

(2) To equalize the amount of business taxes, franchise fees and payments in lieu of taxes on competing suppliers of electricity and gas service.

(3) To restore to political subdivisions revenue sources that existed prior to any previously implemented gas industry restructuring.

(4) To remove disparities in the liability of natural gas suppliers for business taxes, franchise fees, and payments in lieu of taxes, which disparities have arisen as a result of any previously implemented gas industry restructuring.

2. Political subdivisions provide police, fire and public health services, including the inspection of gas and electric equipment and other facilities used in the consumption of gas and electricity. Political subdivisions impose license taxes, franchise fees and sales taxes on providers of electricity and gas services, and require payments in lieu of taxes from publicly owned utilities in order to pay for these and other services related to the transportation, use and consumption of electricity and gas services and for the general operation of government.

3. Missouri has historically restricted competition with respect to electricity and gas services by authorizing the Missouri public service commission to limit the number of providers and has allowed political subdivisions to require franchises for these services. Persons entering the gas and electric markets within Missouri receive substantial revenues from consumers in Missouri, thereby creating a purposeful economic presence in this state. In addition, these persons may also cause electricity and gas to be transported over rights-of-way and utility easements and may use electric lines or gas lines which are owned, controlled and maintained by other public and private entities in this state. Unless all participants in the electricity and gas markets pay comparable taxes and fees, there will be significant tax and franchise fee revenue losses by political subdivisions and unfair competitive disparities among such participants.

4. The legislature finds that electricity and gas are essential, but potentially dangerous, commodities in modern society. The electricity transmission and distribution system is an interconnected and interdependent grid. Therefore, the legislature finds that it is in the interest of public health and safety to require registration of all sellers of electricity and gas for use or consumption within Missouri.

5. It is not the intent of this act to regulate the transportation of natural gas, methane, or propane in interstate commerce to the extent that such regulation is preempted by the Constitution of the United States.

393.298. As used in this section and sections 393.299, 393.301 and 393.302, the following terms mean:

- (1) "Commission", the Missouri public service commission;
- (2) "Distribution system", the physical plant used to provide energy services including facilities, structures, wires and appurtenances thereto;
- (3) "Distributor", an electrical or gas corporation as defined by section 386.020, RSMo, which is authorized by the commission under chapter 393, to provide or distribute energy services;
- (4) "Energy services", the retail sale of electricity or natural gas, propane or methane to customers or consumers and all associated services that are necessary for their delivery through a distribution system including but not limited to the generation, production, transmission, distribution, billing and metering of such services;
- (5) "Gross receipts", all revenues from energy services which are subject to a business license tax of a political subdivision or a franchise agreement between a distributor and a political subdivision or a PILOT;
- (6) "Person", includes any individual, firm, cooperative, copartnership, joint venture, association, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or agency, or any other group or combination acting as a unit, and the plural as well as the singular number;
- (7) "PILOT", the payment or transfer of funds or services by a gas or electric utility owned by a political subdivision and used to provide government services by the political subdivision including the value of free or subsidized services, provided the value of these services are stated annually in an ordinance as a percentage of the total gross receipts of the gas or electric system;
- (8) "Political subdivision", any county, municipality or village in the state of Missouri;
- (9) "Proportionate share", the seller's gross receipts multiplied by the franchise fee rate, specified in a franchise agreement between a distributor and a political subdivision or the PILOT rate as provided in any ordinance or order of the political subdivision for the corresponding use of rights-of-way, utility easements or the distribution system of a political subdivision;
- (10) "Seller", any person who uses, leases or controls the distribution system of a distributor or a political subdivision or any part thereof to sell energy services at

retail within the political subdivision other than a distributor or a political subdivision which uses its own distribution system.

393.299. 1. No person, other than a distributor or a political subdivision operating within its territorial limits, shall provide energy services in a political subdivision which has business license taxes in effect pursuant to section 66.300, 71.610, 92.045, 94.110, or 94.360, RSMo, on persons who sell energy services unless the person is certified by the commission as a seller and files its agreement with the commission to pay to the political subdivision all applicable business license taxes. All retail sales of energy shall be made by a distributor, seller or a political subdivision operating within its territorial limits. No distributor or political subdivision shall provide energy services to any person on behalf of any seller unless the seller has been certified as a seller and filed its agreement with the commission to pay all applicable business license taxes and the commission has furnished such distributor or political subdivision with evidence of such certification.

2. No person shall provide energy services in a political subdivision if a franchise agreement is in effect between a distributor and a political subdivision with respect to energy services, or if the political subdivision owns the distribution system, unless (1) that person enters into an agreement with the political subdivision to pay its proportionate share of the franchise fee or the PILOT, which agreement shall be supplied to the distributor, or (2) the person obtains certification from the commission as a seller and files its agreement to pay the seller's proportionate share of any franchise fee or PILOT. No distributor or political subdivision shall provide energy services to any person on behalf of any seller if a franchise agreement is in effect between a distributor and a political subdivision for energy services, or if the political subdivision owns the distribution system, unless (1) that seller has entered into an agreement with the political subdivision to pay the seller's proportionate share of the franchise fee or the PILOT, or (2) the seller has obtained certification from the commission as a seller and files its agreement to pay the seller's proportionate share of any franchise fee or PILOT.

3. An agreement described in subsections 1 and 2 of this section shall expressly state that the seller waives (1) its right to challenge the validity of the agreement and (2) its right to the refund of amounts paid pursuant to the agreement. Any person who otherwise has standing may challenge the validity of this section without signing such agreement by filing an action for a declaratory judgment in circuit court in the county in which the political subdivision is located. The agreement filed with the commission under subsections 1 and 2 of this section shall be limited solely to the requirements of this subsection and the seller's agreement to pay its taxes, its proportionate share of franchise fees or PILOT's and provisions which require the seller to make available to

the political subdivision or the commission its records, including the right to audit.

4. The commission shall establish procedures for certification pursuant to chapter 536, RSMo.

5. Nothing in this section shall be construed to give any seller the right to use the rights-of-way, utility easements or the distribution system of any distributor or political subdivision for any purpose other than to provide energy services to the seller's retail customers.

6. Any agreement described in subsection 1 or 2 of this section shall cease to be effective upon the failure of the seller to fulfill any material obligation under the agreement. The appropriate political subdivision shall notify the commission of any failure to pay any amount required by any agreement described in subsection 1 or 2 of this section. Upon such notification, the commission shall immediately notify the seller which shall cease to provide energy services unless it requests a hearing with the commission within fifteen days of the date the notice is filed with the commission. Upon receiving notice from the seller requesting a hearing, the commission shall conduct a hearing to determine whether all material obligations under an agreement have been satisfied. If the commission determines that material obligations have not been satisfied, it shall notify the distributor, and the seller shall thereafter be prohibited from providing energy services from the date set forth in the notice, which shall not be less than thirty days after the commission makes its determination. The distributor shall not provide energy services to the seller if the distributor does not request a hearing after being notified of its material fault or if the commission determines that the seller has failed to satisfy a material obligation of the agreement and thirty days have expired from the date of the commission notification of a breach of a material obligation of any agreement authorized by subsection 1 or 2 of this section.

7. A seller shall be required to pay a political subdivision at a rate equal to but not greater than the rate paid by a distributor for business license taxes, franchise fees or PILOT's as provided for in an ordinance or order of the political subdivision or in a franchise agreement.

8. This section shall not be construed as conferring any rights on any seller to provide energy services within a political subdivision in the state of Missouri. No seller may provide energy services unless it does so in accordance with all applicable laws and in accordance with the applicable rules of the commission. Any seller of natural gas shall file its agreement with the commission within thirty days from the passage of this section.

9. Any person liable for the tax under this section, upon proof that such person has paid a tax in another state or political subdivision with respect to a charge for the

sale or transfer of such gas, electricity or energy services, shall be allowed a credit against the tax authorized by this section, to the extent of the amount of the tax legally due and paid in the other state or political subdivision with respect to such charge.

393.300. Notwithstanding the provisions of section 1.140, RSMo, to the contrary, the provisions of section 393.299 shall be nonseverable, and if any provision is for any reason held to be invalid, such decision shall invalidate all of the remaining provisions of section 393.299.

393.301. 1. In the event that any legal action to challenge the validity of any agreement made pursuant to subsection 1 or 2 of section 393.299 is filed in any court of competent jurisdiction, the party initiating that action shall immediately furnish a certified copy of the initial pleading to the commission, which act shall be deemed to suspend the provisions of such agreement pending a final and nonappealable judgment or disposition of such action. Upon receipt of the notification, the commission shall immediately notify each affected political subdivision and person providing energy services of the suspension of those agreements. No seller or distributor shall provide energy services after it receives notice from the commission that the seller's agreements have been suspended pursuant to subsection 1 or 2 of section 393.299.

2. In the event that the provisions of section 393.299 are declared to be void or invalid by final judgment of a court of competent jurisdiction, no energy services shall be permitted except upon a finding of public convenience and necessity and compliance with all provisions of this chapter, regulations adopted pursuant to this chapter, and commission orders. No refund of any tax or fee shall be made to any seller that signs an agreement waiving its right to challenge the validity of section 393.299.

393.302. Notwithstanding the provisions of section 393.299, a political subdivision may by ordinance impose a tax upon persons who use or consume gas, electricity or energy services within such political subdivision but who take title to such gas, electricity or energy services outside of that political subdivision. Any person liable for the tax under this section, upon proof that such person has paid a tax in another state or political subdivision with respect to a charge for the sale or transfer of such gas, electricity or energy services, shall be allowed a credit against the tax authorized by this section, to the extent of the amount of the tax legally due and paid in the other state or political subdivision with respect to such charge. The tax shall be measured by all charges for gas, electricity or energy services by the person using or consuming the gas, electricity or energy services at a rate equal to the rate of the applicable business license tax, as authorized in section 66.300, 71.610, 92.045, 94.110, or 94.360, RSMo, or the applicable franchise fee. Such tax shall not become effective unless the governing body of the political subdivision submits to the voters of that political subdivision at any public election allowed pursuant to subsection 1 of section 115.123,

RSMo, a proposal to impose a tax under the provisions of this section. The question shall be submitted to the voters in substantially the following form:

Shall the (political subdivision) levy a tax for the purpose of equalizing the obligations of all users of gas, electricity or energy services of a percent which is equal to the obligations of current taxpayers on the purchase price of gas, electricity or energy services sold by any person, corporation or other business entity for ultimate use in the political subdivision but not subject to the current tax?

G YES

G NO

If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the tax shall become effective on the first day of the first calendar quarter following the calendar quarter in which the election was held. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the question, then the governing body of the political subdivision shall have no power to impose the tax authorized by this section unless and until the governing body of the political subdivision again submits the question to the qualified voters of the political subdivision and such question is approved by a majority of the qualified voters voting on the question.

Section B. Because of the need to ensure a stable and reliable source of electricity and gas for the cities of this state, this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval.

✓

Copy