

FIRST REGULAR SESSION

HOUSE BILL NO. 594

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES KENNEDY AND HEGEMAN (Co-sponsors).

Read 1st time January 31, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1559L.011

AN ACT

To repeal section 144.010, RSMo 2000, relating to sales tax on telecommunications services, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 144.010, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 144.010, to read as follows:

144.010. 1. The following words, terms, and phrases when used in sections 144.010 to 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 144.525;

(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 144.525. 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 144.525 unless the total amount of 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

19 the sale price of the sales at retail including any services other than charges incident to the
20 extension of credit that are a part of such sales made by the businesses herein referred to, capable
21 of being valued in money, whether received in money or otherwise; except that, the term "gross
22 receipts" shall not include the sale price of property returned by customers when the full sale
23 price thereof is refunded either in cash or by credit. In determining any tax due under sections
24 144.010 to 144.525 on the gross receipts, charges incident to the extension of credit shall be
25 specifically exempted. For the purposes of sections 144.010 to 144.525 the total amount of the
26 sale price above mentioned shall be deemed to be the amount received. It shall also include the
27 lease or rental consideration where the right to continuous possession or use of any article of
28 tangible personal property is granted under a lease or contract and such transfer of possession
29 would be taxable if outright sale were made and, in such cases, the same shall be taxable as if
30 outright sale were made and considered as a sale of such article, and the tax shall be computed
31 and paid by the lessee upon the rentals paid;

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

36 (5) "Motor vehicle leasing company" shall be a company obtaining a permit from the
37 director of revenue to operate as a motor vehicle leasing company. Not all persons renting or
38 leasing trailers or motor vehicles need to obtain such a permit; however, no person failing to
39 obtain such a permit may avail itself of the optional tax provisions of subsection 5 of section
40 144.070, as hereinafter provided;

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

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

49 (8) "Research or experimentation activities", are the development of an experimental or
50 pilot model, plant process, formula, invention or similar property, and the improvement of
51 existing property of such type. Research or experimentation activities do not include activities
52 such as ordinary testing or inspection of materials or products for quality control, efficiency
53 surveys, advertising promotions or research in connection with literary, historical or similar
54 projects;

55 (9) "Sale" or "sales" includes installment and credit sales, and the exchange of properties
56 as well as the sale thereof for money, every closed transaction constituting a sale, and means any
57 transfer, exchange or barter, conditional or otherwise, in any manner or by any means
58 whatsoever, of tangible personal property for valuable consideration and the rendering,
59 furnishing or selling for a valuable consideration any of the substances, things and services
60 herein designated and defined as taxable under the terms of sections 144.010 to 144.525;

61 (10) "Sale at retail" means any transfer made by any person engaged in business as
62 defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use
63 or consumption and not for resale in any form as tangible personal property, for a valuable
64 consideration; except that, for the purposes of sections 144.010 to 144.525 and the tax imposed
65 thereby: (i) purchases of tangible personal property made by duly licensed physicians, dentists,
66 optometrists and veterinarians and used in the practice of their professions shall be deemed to
67 be purchases for use or consumption and not for resale; and (ii) the selling of computer printouts,
68 computer output or microfilm or microfiche and computer-assisted photo compositions to a
69 purchaser to enable the purchaser to obtain for his or her own use the desired information
70 contained in such computer printouts, computer output on microfilm or microfiche and
71 computer-assisted photo compositions shall be considered as the sale of a service and not as the
72 sale of tangible personal property. Where necessary to conform to the context of sections
73 144.010 to 144.525 and the tax imposed thereby, the term "sale at retail" shall be construed to
74 embrace:

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

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

79 (c) Sales of local and long distance telecommunications service to telecommunications
80 subscribers and to others through equipment of telecommunications subscribers for the
81 transmission of messages and conversations, and the sale, rental or leasing of all equipment or
82 services pertaining or incidental thereto;

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

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

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

91 (11) "Seller" means a person selling or furnishing tangible personal property or rendering
92 services, on the receipts from which a tax is imposed pursuant to section 144.020;

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

97 (13) "Telecommunications service", for the purpose of chapter 144, the transmission of
98 information by wire, radio, optical cable, coaxial cable, electronic impulses, or other similar
99 means. As used in this definition, "information" means knowledge or intelligence represented
100 by any form of writing, signs, signals, pictures, sounds, or any other symbols.
101 Telecommunications service does not include the following if such services are separately stated
102 on the customer's bill **or on records of the seller maintained in the ordinary course of**
103 **business:**

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

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

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

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

112 (14) "Product which is intended to be sold ultimately for final use or consumption"
113 means tangible personal property, or any service that is subject to state or local sales or use taxes,
114 or any tax that is substantially equivalent thereto, in this state or any other state.

115 2. For purposes of the taxes imposed under sections 144.010 to 144.525, and any other
116 provisions of law pertaining to sales or use taxes which incorporate the provisions of sections
117 144.010 to 144.525 by reference, the term "manufactured homes" shall have the same meaning
118 given it in section 700.010, RSMo.

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