

FIRST REGULAR SESSION

HOUSE BILL NO. 1025

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KREIDER.

Read 1st time March 15, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2312L.021

AN ACT

To repeal section 144.190, RSMo 2000, and to enact in lieu thereof two new sections relating to the sales tax, with an emergency clause.

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

Section A. Section 144.190, RSMo 2000, is repealed and two new sections enacted in lieu thereof, to be known as sections 144.049 and 144.190, to read as follows:

144.049. 1. For purposes of this section, the following terms mean:

(1) "Clothing", any article of wearing apparel, including footwear and belts, intended to be worn on or about the human body. The term shall not include watches, watchbands, jewelry, handbags, handkerchiefs, umbrellas, scarves, ties, headbands, hats, caps, belt buckles or other accessories; and

(2) "School supplies", any item normally used by students in a standard classroom for educational purposes, including but not limited to, textbooks, notebooks, paper, writing and drawing instruments, crayons, art supplies, rulers, book bags, handheld calculators, chalk, maps and globes. The term shall not include watches, radios, CD players, headphones, sporting equipment, portable or desktop computers, portable or desktop telephones, copiers or other office equipment, furniture, or fixtures.

2. There is hereby specifically exempted from the provisions of the state and local sales tax law as defined in section 32.085, RSMo, section 67.1545, RSMo, section 65.1712, RSMo, sections 70.500 to 70.510, RSMo, section 94.413, RSMo, sections 94.577 to 94.1010, RSMo, sections 144.010 to 144.525, sections 144.600 to 144.745, sections 190.335 to 190.337, RSMo, section 238.235, RSMo, section 238.410, RSMo, section 321.242, RSMo, section

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

17 **321.246, RSMo, and sections 644.032 to 644.033, RSMo, and from the computation of the**
18 **tax levied, assessed or payable pursuant to the state and local sales tax law as defined in**
19 **section 32.085, RSMo, section 67.1545, RSMo, section 65.1712, RSMo, sections 70.500 to**
20 **70.510, RSMo, section 94.413, RSMo, sections 94.577 to 94.1010, RSMo, sections 144.010**
21 **to 144.525, sections 144.600 to 144.745, sections 190.335 to 190.337, RSMo, section 238.235,**
22 **RSMo, section 238.410, RSMo, section 321.242, RSMo, section 321.246, RSMo, and sections**
23 **644.032 to 644.033, RSMo, all retail sales of any article of clothing having a taxable value**
24 **of one hundred dollars or less, and all retail sales of school supplies not to exceed one**
25 **hundred dollars in the aggregate, during the four-day period beginning at 12:01 a.m. on**
26 **the first Thursday in August and ending at midnight on the Sunday following.**

27 **3. Any local sales tax revenue lost in calendar year 2001 due to implementation of**
28 **the sales tax holiday defined in this section shall be reimbursed by the state and every local**
29 **political subdivision shall be held harmless.**

30 **4. Beginning January 1, 2002, the governing body of any political subdivision may**
31 **after a public hearing adopt an ordinance to prohibit the provisions of this section from**
32 **exempting sales that occur within the political subdivision from being subject to the local**
33 **sales taxes applicable to sales within the political subdivision. Upon adoption of such an**
34 **ordinance, the governing body of the political subdivision shall provide written notice to**
35 **the department of revenue of the substance of the ordinance. In the event such notification**
36 **is not received by the department of revenue prior to the first day of May in any given**
37 **year, the ordinance shall not go into effect prior to the first day of September in the year**
38 **the notice is received.**

39 **5. The provisions of this section shall expire July 1, 2004.**

144.190. 1. If a tax has been incorrectly computed by reason of a clerical error or
2 mistake on the part of the director of revenue, such fact shall be set forth in the records of the
3 director of revenue, and the amount of the overpayment shall be credited on any taxes then due
4 from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and
5 the balance shall be refunded to the person legally obligated to remit the tax, such person's
6 administrators or executors, as provided for in section 144.200.

7 2. If any [tax,] penalty or interest has been paid more than once, or has been erroneously
8 or illegally collected, or has been erroneously or illegally computed, such sum shall be credited
9 on any taxes then due from the person legally obligated to remit the tax pursuant to sections
10 144.010 to 144.510, and the balance, with interest as determined by section 32.065, RSMo, shall
11 be refunded to the person legally obligated to remit the tax, but no such credit or refund shall be
12 allowed unless duplicate copies of a claim for refund are filed within three years from date of
13 overpayment.

14 **3. If any tax was paid more than once, was incorrectly collected, or was incorrectly**
15 **computed, such sum shall be credited on any taxes then due from the person legally**
16 **obligated to remit the tax pursuant to sections 144.010 to 144.510, or refunded, with**
17 **interest as determined by section 32.065, RSMo, to the person legally obligated to remit the**
18 **tax, only if duplicate copies of a claim for refund are filed within three years from date of**
19 **overpayment and, either the person legally obligated to remit the tax demonstrates to the**
20 **satisfaction of the director of revenue that all incorrectly collected amounts were or will**
21 **be refunded or credited to every purchaser that originally paid the tax, or the person**
22 **legally obligated to remit the tax submits to the director amended sales tax returns showing**
23 **the correct amount of gross receipts for each reporting period originally filed and proves**
24 **to the director's satisfaction that the tax originally reported and remitted to the director**
25 **was paid by such person claiming the refund or credit and was not collected from**
26 **purchasers. This subsection shall not apply to any retailer who improperly collects a sales**
27 **tax during the period of the sales tax holiday authorized by section 144.049.**

28 **4.** Every claim for refund must be in writing under oath, and must state the specific
29 grounds upon which the claim is founded. Any refund or any portion thereof which is
30 erroneously made, and any credit or any portion thereof which is erroneously allowed, may be
31 recovered in any action brought by the director of revenue against the person legally obligated
32 to remit the tax. In the event that a tax has been illegally imposed against a person legally
33 obligated to remit the tax, the director of revenue shall authorize the cancellation of the tax upon
34 the director's record.

35 **[4.] 5.** Notwithstanding the provisions of this section, the director of revenue shall
36 authorize direct-pay agreements to purchasers which have annual purchases in excess of seven
37 hundred fifty thousand dollars pursuant to rules and regulations adopted by the director of
38 revenue. For the purposes of such direct-pay agreements, the taxes authorized pursuant to
39 chapters 66, RSMo, 67, RSMo, 92, RSMo, and 94, RSMo, shall be remitted based upon the
40 location of the place of business of the purchaser.

 Section B. Because immediate action is necessary to prevent the imposition of sales tax
2 on retail sales of clothing, the enactment of section 144.049 is deemed necessary for the
3 immediate preservation of the public health, welfare, peace and safety, and is hereby declared
4 to be an emergency act within the meaning of the constitution, and the enactment of section
5 144.049 shall be in full force and effect July 1, 2001, or upon its passage and approval,
6 whichever later occurs.