

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 532

93RD GENERAL ASSEMBLY

Reported from the Committee on Job Creation and Economic Development March 15, 2005, with recommendation that the House Committee Substitute for House Bill No. 532 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules March 17, 2005 with recommendation that House Committee Substitute for House Bill No. 532 Do Pass with no time limit for debate.

Taken up for Perfection April 18, 2005. House Committee Substitute for House Bill No. 532 ordered Perfected and printed as amended.

STEPHEN S. DAVIS, Chief Clerk

1049L.04P

AN ACT

To repeal section 144.030 RSMo and to enact in lieu thereof two new sections relating to sales and use tax exemptions.

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

Section A. Section 144.030 is repealed and two new sections are enacted, to be known
2 as sections 144.030 and 144.051, to read as follows:

144.030. 1. There is hereby specifically exempted from the provisions of sections
2 144.010 to 144.525 and from the computation of the tax levied, assessed or payable pursuant to
3 sections 144.010 to 144.525 such retail sales as may be made in commerce between this state and
4 any other state of the United States, or between this state and any foreign country, and any retail
5 sale which the state of Missouri is prohibited from taxing pursuant to the Constitution or laws
6 of the United States of America, and such retail sales of tangible personal property which the
7 general assembly of the state of Missouri is prohibited from taxing or further taxing by the
8 constitution of this state.

9 2. There are also specifically exempted from the provisions of the local sales tax law as
10 defined in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525 and
11 144.600 to 144.745 and from the computation of the tax levied, assessed or payable pursuant to

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 the local sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and sections
13 144.010 to 144.525 and 144.600 to 144.745:

14 (1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of
15 such excise tax is refunded pursuant to section 142.584, RSMo; or upon the sale at retail of fuel
16 to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing
17 water to be sold ultimately at retail; or feed for livestock or poultry; or grain to be converted into
18 foodstuffs which are to be sold ultimately in processed form at retail; or seed, limestone or
19 fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested will
20 be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at
21 retail; economic poisons registered pursuant to the provisions of the Missouri pesticide
22 registration law (sections 281.220 to 281.310, RSMo) which are to be used in connection with
23 the growth or production of crops, fruit trees or orchards applied before, during, or after planting,
24 the crop of which when harvested will be sold at retail or will be converted into foodstuffs which
25 are to be sold ultimately in processed form at retail;

26 (2) Materials, manufactured goods, machinery and parts which when used in
27 manufacturing, processing, compounding, mining, producing or fabricating become a component
28 part or ingredient of the new personal property resulting from such manufacturing, processing,
29 compounding, mining, producing or fabricating and which new personal property is intended to
30 be sold ultimately for final use or consumption; and materials, including without limitation,
31 gases and manufactured goods, including without limitation, slagging materials and firebrick,
32 which are ultimately consumed in the manufacturing process by blending, reacting or interacting
33 with or by becoming, in whole or in part, component parts or ingredients of steel products
34 intended to be sold ultimately for final use or consumption;

35 (3) Materials, replacement parts and equipment purchased for use directly upon, and for
36 the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock
37 or aircraft engaged as common carriers of persons or property;

38 (4) Replacement machinery, equipment, and parts and the materials and supplies solely
39 required for the installation or construction of such replacement machinery, equipment, and
40 parts, used directly in manufacturing, mining, fabricating or producing a product which is
41 intended to be sold ultimately for final use or consumption; and machinery and equipment, and
42 the materials and supplies required solely for the operation, installation or construction of such
43 machinery and equipment, purchased and used to establish new, or to replace or expand existing,
44 material recovery processing plants in this state. For the purposes of this subdivision, a "material
45 recovery processing plant" means a facility which converts recovered materials into a new
46 product, or a different form which is used in producing a new product, and shall include a facility
47 or equipment which is used exclusively for the collection of recovered materials for delivery to

48 a material recovery processing plant but shall not include motor vehicles used on highways. For
49 purposes of this section, the terms "motor vehicle" and "highway" shall have the same meaning
50 pursuant to section 301.010, RSMo;

51 (5) Machinery and equipment, and parts and the materials and supplies solely required
52 for the installation or construction of such machinery and equipment, purchased and used to
53 establish new or to expand existing manufacturing, mining or fabricating plants in the state if
54 such machinery and equipment is used directly in manufacturing, mining or fabricating a product
55 which is intended to be sold ultimately for final use or consumption;

56 (6) Tangible personal property which is used exclusively in the manufacturing,
57 processing, modification or assembling of products sold to the United States government or to
58 any agency of the United States government;

59 (7) Animals or poultry used for breeding or feeding purposes;

60 (8) Newsprint, ink, computers, photosensitive paper and film, toner, printing plates and
61 other machinery, equipment, replacement parts and supplies used in producing newspapers
62 published for dissemination of news to the general public;

63 (9) The rentals of films, records or any type of sound or picture transcriptions for public
64 commercial display;

65 (10) Pumping machinery and equipment used to propel products delivered by pipelines
66 engaged as common carriers;

67 (11) Railroad rolling stock for use in transporting persons or property in interstate
68 commerce and motor vehicles licensed for a gross weight of twenty-four thousand pounds or
69 more or trailers used by common carriers, as defined in section 390.020, RSMo, solely in the
70 transportation of persons or property in interstate commerce;

71 (12) Electrical energy used in the actual primary manufacture, processing, compounding,
72 mining or producing of a product, or electrical energy used in the actual secondary processing
73 or fabricating of the product, or a material recovery processing plant as defined in subdivision
74 (4) of this subsection, in facilities owned or leased by the taxpayer, if the total cost of electrical
75 energy so used exceeds ten percent of the total cost of production, either primary or secondary,
76 exclusive of the cost of electrical energy so used or if the raw materials used in such processing
77 contain at least twenty-five percent recovered materials as defined in section 260.200, RSMo.

78 **There shall be a rebuttable presumption that the raw materials used in the primary**
79 **manufacture of automobiles contain at least twenty-five percent recovered materials.** For
80 purposes of this subdivision, "processing" means any mode of treatment, act or series of acts
81 performed upon materials to transform and reduce them to a different state or thing, including
82 treatment necessary to maintain or preserve such processing by the producer at the production
83 facility;

84 (13) Anodes which are used or consumed in manufacturing, processing, compounding,
85 mining, producing or fabricating and which have a useful life of less than one year;

86 (14) Machinery, equipment, appliances and devices purchased or leased and used solely
87 for the purpose of preventing, abating or monitoring air pollution, and materials and supplies
88 solely required for the installation, construction or reconstruction of such machinery, equipment,
89 appliances and devices, and so certified as such by the director of the department of natural
90 resources, except that any action by the director pursuant to this subdivision may be appealed to
91 the air conservation commission which may uphold or reverse such action;

92 (15) Machinery, equipment, appliances and devices purchased or leased and used solely
93 for the purpose of preventing, abating or monitoring water pollution, and materials and supplies
94 solely required for the installation, construction or reconstruction of such machinery, equipment,
95 appliances and devices, and so certified as such by the director of the department of natural
96 resources, except that any action by the director pursuant to this subdivision may be appealed to
97 the Missouri clean water commission which may uphold or reverse such action;

98 (16) Tangible personal property purchased by a rural water district;

99 (17) All amounts paid or charged for admission or participation or other fees paid by or
100 other charges to individuals in or for any place of amusement, entertainment or recreation, games
101 or athletic events, including museums, fairs, zoos and planetariums, owned or operated by a
102 municipality or other political subdivision where all the proceeds derived therefrom benefit the
103 municipality or other political subdivision and do not inure to any private person, firm, or
104 corporation;

105 (18) All sales of insulin and prosthetic or orthopedic devices as defined on January 1,
106 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of
107 1965, including the items specified in Section 1862(a)(12) of that act, and also specifically
108 including hearing aids and hearing aid supplies and all sales of drugs which may be legally
109 dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to
110 administer those items, including samples and materials used to manufacture samples which may
111 be dispensed by a practitioner authorized to dispense such samples and all sales of medical
112 oxygen, home respiratory equipment and accessories, hospital beds and accessories and
113 ambulatory aids, all sales of manual and powered wheelchairs, stairway lifts, Braille writers,
114 electronic Braille equipment and, if purchased by or on behalf of a person with one or more
115 physical or mental disabilities to enable them to function more independently, all sales of
116 scooters, reading machines, electronic print enlargers and magnifiers, electronic alternative and
117 augmentative communication devices, and items used solely to modify motor vehicles to permit
118 the use of such motor vehicles by individuals with disabilities or sales of over-the-counter or
119 nonprescription drugs to individuals with disabilities;

120 (19) All sales made by or to religious and charitable organizations and institutions in their
121 religious, charitable or educational functions and activities and all sales made by or to all
122 elementary and secondary schools operated at public expense in their educational functions and
123 activities;

124 (20) All sales of aircraft to common carriers for storage or for use in interstate commerce
125 and all sales made by or to not-for-profit civic, social, service or fraternal organizations,
126 including fraternal organizations which have been declared tax-exempt organizations pursuant
127 to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, solely in their civic
128 or charitable functions and activities and all sales made to eleemosynary and penal institutions
129 and industries of the state, and all sales made to any private not-for-profit institution of higher
130 education not otherwise excluded pursuant to subdivision (19) of this subsection or any
131 institution of higher education supported by public funds, and all sales made to a state relief
132 agency in the exercise of relief functions and activities;

133 (21) All ticket sales made by benevolent, scientific and educational associations which
134 are formed to foster, encourage, and promote progress and improvement in the science of
135 agriculture and in the raising and breeding of animals, and by nonprofit summer theater
136 organizations if such organizations are exempt from federal tax pursuant to the provisions of the
137 Internal Revenue Code and all admission charges and entry fees to the Missouri state fair or any
138 fair conducted by a county agricultural and mechanical society organized and operated pursuant
139 to sections 262.290 to 262.530, RSMo;

140 (22) All sales made to any private not-for-profit elementary or secondary school, all sales
141 of feed additives, medications or vaccines administered to livestock or poultry in the production
142 of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for
143 food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber,
144 all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying
145 agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as
146 defined in section 142.028, RSMo, and all sales of farm machinery and equipment, other than
147 airplanes, motor vehicles and trailers. As used in this subdivision, the term "feed additives"
148 means tangible personal property which, when mixed with feed for livestock or poultry, is to be
149 used in the feeding of livestock or poultry. As used in this subdivision, the term "pesticides"
150 includes adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide
151 carriers used to improve or enhance the effect of a pesticide and the foam used to mark the
152 application of pesticides and herbicides for the production of crops, livestock or poultry. As used
153 in this subdivision, the term "farm machinery and equipment" means new or used farm tractors
154 and such other new or used farm machinery and equipment and repair or replacement parts
155 thereon, and supplies and lubricants used exclusively, solely, and directly for producing crops,

156 raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for
157 ultimate sale at retail and one-half of each purchaser's purchase of diesel fuel therefor which is:

158 (a) Used exclusively for agricultural purposes;

159 (b) Used on land owned or leased for the purpose of producing farm products; and

160 (c) Used directly in producing farm products to be sold ultimately in processed form or
161 otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold
162 ultimately in processed form at retail;

163 (23) Except as otherwise provided in section 144.032, all sales of metered water service,
164 electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil
165 for domestic use and in any city not within a county, all sales of metered or unmetered water
166 service for domestic use;

167 (a) "Domestic use" means that portion of metered water service, electricity, electrical
168 current, natural, artificial or propane gas, wood, coal or home heating oil, and in any city not
169 within a county, metered or unmetered water service, which an individual occupant of a
170 residential premises uses for nonbusiness, noncommercial or nonindustrial purposes. Utility
171 service through a single or master meter for residential apartments or condominiums, including
172 service for common areas and facilities and vacant units, shall be deemed to be for domestic use.
173 Each seller shall establish and maintain a system whereby individual purchases are determined
174 as exempt or nonexempt;

175 (b) Regulated utility sellers shall determine whether individual purchases are exempt or
176 nonexempt based upon the seller's utility service rate classifications as contained in tariffs on file
177 with and approved by the Missouri public service commission. Sales and purchases made
178 pursuant to the rate classification "residential" and sales to and purchases made by or on behalf
179 of the occupants of residential apartments or condominiums through a single or master meter,
180 including service for common areas and facilities and vacant units, shall be considered as sales
181 made for domestic use and such sales shall be exempt from sales tax. Sellers shall charge sales
182 tax upon the entire amount of purchases classified as nondomestic use. The seller's utility service
183 rate classification and the provision of service thereunder shall be conclusive as to whether or
184 not the utility must charge sales tax;

185 (c) Each person making domestic use purchases of services or property and who uses any
186 portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day
187 of the fourth month following the year of purchase, and without assessment, notice or demand,
188 file a return and pay sales tax on that portion of nondomestic purchases. Each person making
189 nondomestic purchases of services or property and who uses any portion of the services or
190 property so purchased for domestic use, and each person making domestic purchases on behalf
191 of occupants of residential apartments or condominiums through a single or master meter,

192 including service for common areas and facilities and vacant units, under a nonresidential utility
193 service rate classification may, between the first day of the first month and the fifteenth day of
194 the fourth month following the year of purchase, apply for credit or refund to the director of
195 revenue and the director shall give credit or make refund for taxes paid on the domestic use
196 portion of the purchase. The person making such purchases on behalf of occupants of residential
197 apartments or condominiums shall have standing to apply to the director of revenue for such
198 credit or refund;

199 (24) All sales of handcraft items made by the seller or the seller's spouse if the seller or
200 the seller's spouse is at least sixty-five years of age, and if the total gross proceeds from such
201 sales do not constitute a majority of the annual gross income of the seller;

202 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071,
203 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of
204 revenue shall promulgate rules pursuant to chapter 536, RSMo, to eliminate all state and local
205 sales taxes on such excise taxes;

206 (26) Sales of fuel consumed or used in the operation of ships, barges, or waterborne
207 vessels which are used primarily in or for the transportation of property or cargo, or the
208 conveyance of persons for hire, on navigable rivers bordering on or located in part in this state,
209 if such fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while
210 it is afloat upon such river;

211 (27) All sales made to an interstate compact agency created pursuant to sections 70.370
212 to 70.430, RSMo, or sections 238.010 to 238.100, RSMo, in the exercise of the functions and
213 activities of such agency as provided pursuant to the compact;

214 (28) Computers, computer software and computer security systems purchased for use by
215 architectural or engineering firms headquartered in this state. For the purposes of this
216 subdivision, "headquartered in this state" means the office for the administrative management
217 of at least four integrated facilities operated by the taxpayer is located in the state of Missouri;

218 (29) All livestock sales when either the seller is engaged in the growing, producing or
219 feeding of such livestock, or the seller is engaged in the business of buying and selling, bartering
220 or leasing of such livestock;

221 (30) All sales of barges which are to be used primarily in the transportation of property
222 or cargo on interstate waterways;

223 (31) Electrical energy or gas, whether natural, artificial or propane, which is ultimately
224 consumed in connection with the manufacturing of cellular glass products;

225 (32) Notwithstanding other provisions of law to the contrary, all sales of pesticides or
226 herbicides used in the production of crops, aquaculture, livestock or poultry;

227 (33) Tangible personal property purchased for use or consumption directly or exclusively

228 in the research and development of prescription pharmaceuticals consumed by humans or
229 animals;

230 (34) All sales of grain bins for storage of grain for resale;

231 (35) All sales of feed which are developed for and used in the feeding of pets owned by
232 a commercial breeder when such sales are made to a commercial breeder, as defined in section
233 273.325, RSMo, and licensed pursuant to sections 273.325 to 273.357, RSMo;

234 (36) All purchases by a contractor on behalf of an entity located in another state, provided
235 that the entity is authorized to issue a certificate of exemption for purchases to a contractor under
236 the provisions of that state's laws. For purposes of this subdivision, the term "certificate of
237 exemption" shall mean any document evidencing that the entity is exempt from sales and use
238 taxes on purchases pursuant to the laws of the state in which the entity is located. Any contractor
239 making purchases on behalf of such entity shall maintain a copy of the entity's exemption
240 certificate as evidence of the exemption. If the exemption certificate issued by the exempt entity
241 to the contractor is later determined by the director of revenue to be invalid for any reason and
242 the contractor has accepted the certificate in good faith, neither the contractor or the exempt
243 entity shall be liable for the payment of any taxes, interest and penalty due as the result of use
244 of the invalid exemption certificate. Materials shall be exempt from all state and local sales and
245 use taxes when purchased by a contractor for the purpose of fabricating tangible personal
246 property which is used in fulfilling a contract for the purpose of constructing, repairing or
247 remodeling facilities for the following:

248 (a) An exempt entity located in this state, if the entity is one of those entities able to issue
249 project exemption certificates in accordance with the provisions of section 144.062; or

250 (b) An exempt entity located outside the state if the exempt entity is authorized to issue
251 an exemption certificate to contractors in accordance with the provisions of that state's law and
252 the applicable provisions of this section;

253 (37) Tangible personal property purchased for use or consumption directly or exclusively
254 in research or experimentation activities performed by life science companies and so certified
255 as such by the director of the department of economic development or the director's designees;
256 except that, the total amount of exemptions certified pursuant to this section shall not exceed one
257 million three hundred thousand dollars in state and local taxes per fiscal year. For purposes of
258 this subdivision, the term "life science companies" means companies whose primary research
259 activities are in agriculture, pharmaceuticals, biomedical or food ingredients, and whose North
260 American Industry Classification System (NAICS) Codes fall under industry 541710 (biotech
261 research or development laboratories), 621511 (medical laboratories) or 541940 (veterinary
262 services). The exemption provided by this subdivision shall expire on June 30, 2003;

263 (38) All sales or other transfers of tangible personal property to a lessor, who leases the

264 property under a lease of one year or longer executed or in effect at the time of the sale or other
265 transfer, to an interstate compact agency created pursuant to sections 70.370 to 70.430, RSMo,
266 or sections 238.010 to 238.100, RSMo.

144.051. In addition to the exemptions granted in section 144.030, there is hereby
2 **specifically exempted from the provisions of any state tax levied and imposed in this**
3 **chapter all sales of new motor vehicles assembled and sold in the state of Missouri on or**
4 **after January 1, 2006. For purposes of this section, "motor vehicle" means any self-**
5 **propelled vehicle not operated exclusively upon tracks, except farm tractors. This section**
6 **shall not be construed to prohibit the levy of any local sales tax, as defined in section**
7 **32.085, RSMo, on any sales of new motor vehicles assembled and sold in the state on or**
8 **after January 1, 2006. In the event that any political subdivision has enacted a local sales**
9 **tax on such sales, the political subdivision may, by order or ordinance, exempt such sales**
10 **from the local sales tax law.**

11 **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that**
12 **is created under the authority delegated in this section shall become effective only if it**
13 **complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
14 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
15 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
16 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
17 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
18 **adopted after August 28, 2005, shall be invalid and void.**