

FIRST REGULAR SESSION

# HOUSE BILL NO. 449

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MEINERS.

Read 1<sup>st</sup> time February 3, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0795L.011

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### AN ACT

To repeal section 144.030, RSMo, and to enact in lieu thereof one new section relating to sales tax exemptions.

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

Section A. Section 144.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.030, to read as follows:

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

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

(1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such excise tax is refunded pursuant to section [142.584] **142.824**, RSMo; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current

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.

17 or in furnishing water to be sold ultimately at retail; or feed for livestock or poultry; or grain to  
18 be converted into foodstuffs which are to be sold ultimately in processed form at retail; or seed,  
19 limestone or fertilizer which is to be used for seeding, liming or fertilizing crops which when  
20 harvested will be sold at retail or will be fed to livestock or poultry to be sold ultimately in  
21 processed form at retail; economic poisons registered pursuant to the provisions of the Missouri  
22 pesticide registration law (sections 281.220 to 281.310, RSMo) which are to be used in  
23 connection with the growth or production of crops, fruit trees or orchards applied before, during,  
24 or after planting, the crop of which when harvested will be sold at retail or will be converted into  
25 foodstuffs which 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 For purposes of this subdivision, "processing" means any mode of treatment, act or series of acts  
79 performed upon materials to transform and reduce them to a different state or thing, including  
80 treatment necessary to maintain or preserve such processing by the producer at the production  
81 facility;

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

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

89 the air conservation commission which may uphold or reverse such action;

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

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

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

103 (18) All sales of insulin and prosthetic or orthopedic devices as defined on January 1,  
104 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of  
105 1965, including the items specified in Section 1862(a)(12) of that act, and also specifically  
106 including hearing aids and hearing aid supplies and all sales of drugs which may be legally  
107 dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to  
108 administer those items, including samples and materials used to manufacture samples which may  
109 be dispensed by a practitioner authorized to dispense such samples and all sales of medical  
110 oxygen, home respiratory equipment and accessories, hospital beds and accessories and  
111 ambulatory aids, all sales of manual and powered wheelchairs, stairway lifts, Braille writers,  
112 electronic Braille equipment and, if purchased by or on behalf of a person with one or more  
113 physical or mental disabilities to enable them to function more independently, all sales of  
114 scooters, reading machines, electronic print enlargers and magnifiers, electronic alternative and  
115 augmentative communication devices, and items used solely to **build or** modify motor vehicles  
116 to permit the use of such motor vehicles by individuals with disabilities or sales of  
117 over-the-counter or nonprescription drugs to individuals with disabilities;

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

122 (20) All sales of aircraft to common carriers for storage or for use in interstate commerce  
123 and all sales made by or to not-for-profit civic, social, service or fraternal organizations,  
124 including fraternal organizations which have been declared tax-exempt organizations pursuant

125 to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, solely in their civic  
126 or charitable functions and activities and all sales made to eleemosynary and penal institutions  
127 and industries of the state, and all sales made to any private not-for-profit institution of higher  
128 education not otherwise excluded pursuant to subdivision (19) of this subsection or any  
129 institution of higher education supported by public funds, and all sales made to a state relief  
130 agency in the exercise of relief functions and activities;

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

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

156 (a) Used exclusively for agricultural purposes;

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

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

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

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

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

183 (c) Each person making domestic use purchases of services or property and who uses any  
184 portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day  
185 of the fourth month following the year of purchase, and without assessment, notice or demand,  
186 file a return and pay sales tax on that portion of nondomestic purchases. Each person making  
187 nondomestic purchases of services or property and who uses any portion of the services or  
188 property so purchased for domestic use, and each person making domestic purchases on behalf  
189 of occupants of residential apartments or condominiums through a single or master meter,  
190 including service for common areas and facilities and vacant units, under a nonresidential utility  
191 service rate classification may, between the first day of the first month and the fifteenth day of  
192 the fourth month following the year of purchase, apply for credit or refund to the director of  
193 revenue and the director shall give credit or make refund for taxes paid on the domestic use  
194 portion of the purchase. The person making such purchases on behalf of occupants of residential  
195 apartments or condominiums shall have standing to apply to the director of revenue for such  
196 credit or refund;

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

200 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071,  
201 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of  
202 revenue shall promulgate rules pursuant to chapter 536, RSMo, to eliminate all state and local  
203 sales taxes on such excise taxes;

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

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

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

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

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

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

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

225 (33) Tangible personal property purchased for use or consumption directly or exclusively  
226 in the research and development of prescription pharmaceuticals consumed by humans or  
227 animals;

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

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

232 (36) All purchases by a contractor on behalf of an entity located in another state,

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

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

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

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

261 (38) All sales or other transfers of tangible personal property to a lessor, who leases the  
262 property under a lease of one year or longer executed or in effect at the time of the sale or other  
263 transfer, to an interstate compact agency created pursuant to sections 70.370 to [70.430] **70.441**,  
264 RSMo, or sections 238.010 to 238.100, RSMo.