

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rule-making process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least 30 days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than 30 days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the 90-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than 30 days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 5—Air Quality Standards and Air Pollution
Control Rules Specific to the St. Louis Metropolitan
Area**

PROPOSED AMENDMENT

10 CSR 10-5.380 Motor Vehicle Emissions Inspection. The commission proposes to amend subsections (3)(E) and (3)(J) and add subsections (2)(C) and (7)(C). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan.

PURPOSE: This amendment enacts the revised provisions of sections 643.305-643.350, RSMo. One wait time penalty is removed,

inspection program options for Franklin County residents are incorporated and the transitional program is incorporated.

(2) Applicability.

(C) Owners of motor vehicles registered in Franklin County who choose to have their vehicles biennial emission inspected shall have their vehicles inspected at emission stations in City of St. Louis or the counties of St. Louis, St. Charles, or Jefferson pursuant to this rule.

(3) General Requirements.

(E) Emission Inspection Fee.

1. The vehicle owner or driver shall pay twenty-four dollars (\$24) to the centralized emission inspection station.

2. This fee shall also include free reinspections, provided the vehicle owner or driver complies with all reinspection requirements as required in subsection (3)(G) of this rule, and the reinspections are conducted within thirty (30) days of the initial inspection.

3. The required test fee shall be reduced on days of operation, other than the last three (3) days of operation in each calendar month, by an amount proportional to the time that the vehicle owner or driver is required to wait before the inspection begins.

[A. If the wait time is greater than fifteen (15) minutes, the fee shall be reduced by five dollars (\$5);]

[B.] A. If the wait time is greater than thirty (30) minutes, the fee shall be reduced by ten dollars (\$10); or

[C.] B. If the wait time is greater than one (1) hour, the fee shall be reduced by twenty dollars (\$20).

4. The fee reimbursed to the state by the contractor shall be two dollars and fifty cents (\$2.50) for each individual fee paid by a vehicle owner or driver. The fee shall be remitted to the director of revenue on a weekly basis. The director of revenue shall deposit the fee into the "Missouri Air Emission Reduction Fund" as established by 643.350, RSMo.

(J) Vehicle Registration. After a subject vehicle has passed the emission inspection or received a waiver, the emission inspection certificate of compliance issued by the emission inspection station shall be submitted with registration documents by the vehicle owner or representative to the Missouri Department of Revenue at the time of vehicle registration. **This requirement shall not apply to vehicles registered during the transitional period under subsection (7)(C) of this rule.**

(7) Documentation.

(C) Transitional Period. The transitional period shall begin January 1, 2000, and end when the centralized test-only emission inspection stations begin emissions inspections.

1. Owners of subject vehicles shall receive either a clean screen notice as provided in subsection (3)(I) of this rule or an emission extension certificate and emission extension sticker, which will allow subject vehicle owners to register their vehicle in a timely manner. An emission extension certificate is the document that allows subject vehicle owners to register their vehicles with a deferred emissions inspection. An emission extension sticker is the sticker that temporarily replaces the emission sticker for up to six (6) months.

2. The owner of a vehicle that has not received a clean screen notice and who cannot obtain an emission inspection during the transitional period may submit an emission extension certificate, in lieu of an emission inspection certificate, to the Missouri Department of Revenue in order to register the vehicle only during the transitional period. Owners of such vehicles who do not receive an emission extension certificate by mail may obtain one from the Department of Revenue at the time the vehicle is registered during the transitional period.

3. The emission extension certificate shall contain the certificate's expiration date.

4. The emission extension sticker shall be affixed on the inside of the vehicle's front windshield in the lower left hand corner. Previous emission inspection stickers affixed to the windshield shall be removed. Stickers are valid for six (6) calendar months.

5. The owner shall have their subject vehicle emission inspected prior to the emission extension sticker expiring.

6. The emission inspection sticker that replaces the emission extension sticker shall be valid until the subject vehicle's next required emission inspection.

7. No emission inspection fee is required for the emission extension certificate and emission extension sticker.

8. The automobile dealer may sell the vehicle with prior inspection and approval. The automobile dealer shall disclose, in writing, prior to sale, whether the vehicle obtained approval by meeting the emissions standards established pursuant to sections 643.300 to 643.355, RSMo or by obtaining a waiver pursuant to section 643.335, RSMo. A vehicle sold pursuant to this subsection by a licensed motor vehicle dealer shall be inspected and approved within the one hundred twenty (120) days immediately preceding the date of sale, and, for the purpose of registration of such vehicle, such inspection shall be considered timely.

9. The automobile dealer may sell the vehicle without prior inspection and approval. The automobile dealer shall disclose conspicuously on the sales contract and bill of sale that the purchaser has the option to return the vehicle that fails an emission inspection within ten (10) days, provided that the vehicle has no more than one thousand (1,000) additional miles since the time of sale. The automobile dealer shall inform the purchaser about emission inspecting the vehicle.

10. The automobile dealer shall either repair the returned vehicle and provide an emissions certificate and sticker within five (5) working days or enter into any mutually acceptable agreement with the purchaser.

11. The automobile dealer and used car purchaser may emission inspect their vehicles using the contractor's mobile emission vans. 1971 through 1980 model year vehicles shall have the idle test pursuant to subsection (4)(A) of this rule. 1981 and newer model year vehicles shall have the two-speed idle test pursuant to subsection (4)(E) of this rule. All vehicles shall receive the gas cap test and OBD test pursuant to subsections (5)(F) and (5)(G) of this rule.

AUTHORITY: section 643.310.1, RSMo Supp. [1998] 1999. Original rule filed June 14, 1982, effective Jan. 13, 1983. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Nov. 30, 1999, effective Jan. 1, 2000, expires June 28, 2000. Amended: Filed Dec. 1, 1999.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will cost \$7,031 in FY 2000 and \$28,968 in FY 2001. The proposed rule will cost \$234,938 in the aggregate. Note attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., February 8, 2000. The public hearing will be held at the Ramada Inn, Hermitage Room, 1510 Jefferson Street, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven days prior to the hearing to Roger D. Randolph, Director, Air Pollution Control Program, 205

Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., February 15, 2000. Written comments shall be sent to Chief, Planning Section, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBERTitle: 10 – Department of Natural ResourcesDivision: 10 – Air Conservation CommissionChapter: 5 – Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan AreaType of Rulemaking: Proposed AmendmentRule Number and Name: 10 CSR 10-5.380 – Motor Vehicle Emissions Inspection**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the Proposed Rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
9,375	Motor Vehicle Owners in Franklin County	\$234,938

III. WORKSHEET

Fiscal Year	2000	2001	Annualized Aggregate
I/M Fee	\$7,031	\$28,968	\$31,697

- 1) $75,000 * 0.5 = 37,500$ vehicles
- 2) $37,500 * 0.25 = 9,375$ vehicles
- 3) $9,375 * \$24 = \$225,000$
- 4) $9,375 * \$21 = \$196,875$
- 5) $\$225,000 - \$196,875 = \$28,125$
- 6)
 - a. $9,375 * 1.03 = 9,656$ vehicles tested in FY2001
 - b. $9,375 * 1.03^2 = 9,946$ vehicles tested in FY2002
 - c. $9,375 * 1.03^3 = 10,244$ vehicles tested in FY2003
 - d. $9,375 * 1.03^4 = 10,552$ vehicles tested in FY2004
 - e. $9,375 * 1.03^5 = 10,868$ vehicles tested in FY2005
 - f. $9,375 * 1.03^6 = 11,194$ vehicles tested in FY2006
 - g. $9,375 * 1.03^7 = 11,530$ vehicles tested in FY2007
 - h. $9,375 * 1.03^8 * \frac{2 \text{ mos}}{12 \text{ mos}} = 1,979$ vehicles tested in FY2008

- 7) FY 2000: $\$28,125 * 0.25 = \$7,031$
- 8) FY 2001: $(9,656 * \$24) - (9,656 * \$21) = \$28,968$
- 9) FY 2002 thru FY 2008 calculations are similar to 8) above except using applicable number of vehicles tested from 6) above.
- 10) The \$234,938 aggregate cost is obtained by summing the totals of 7), 8) and 9) above.
- 11) The total annualized aggregate is the aggregate cost divided by 7.4167 (or 7 years and 5 months).

IV. ASSUMPTIONS

1. Franklin County has 75,000 registered vehicles.
2. 50% of the registered Franklin County vehicles eligible for biennial emission inspection.
3. 25% of the eligible vehicles will choose a biennial emission inspection.
4. There is a \$24 inspection fee for the biennial program.
5. There is a \$21 inspection fee for two years of the annual inspection program (\$10.50 annually).
6. The difference between the annual and the biennial fees will be the additional cost that Franklin County residents will pay for an enhanced emission inspection.
7. Emission inspections will begin April 2000 and end August 2007 resulting in 7 years and 5 months of collecting emission fees. The life of the rule is estimated to be 7 years and 5 months.
8. Franklin County will grow approximately 3% a year.
9. There will be approximately 3 months of emission inspections in FY2000.
10. Franklin county residents will get these inspections in combination with other trips so no other extra cost will be incurred.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 60—Division of Highway Safety
Chapter 1—Motorcycle Safety Education Program**

PROPOSED AMENDMENT

11 CSR 60-1.070 Motorcycle Requirements. The division is amending section (4).

PURPOSE: This amendment will increase the engine displacement for motorcycles used in an approved Motorcycle Rider Training Program.

(4) A moped, no-ped, motor scooter, motor-assisted bicycle, or a motorcycle with an engine displacement of over [350cc] 500cc—

(A) May not be used in the basic course; and

(B) May be used in the advanced course only if it meets all other requirements of this rule.

AUTHORITY: section 302.134, RSMo [Supp. 1995] Supp. 1999. Original rule filed March 20, 1996, effective September 30, 1996. Amended: Filed Nov. 22, 1999.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Highway Safety, P.O. Box 104808, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 2—Income Tax**

PROPOSED AMENDMENT

12 CSR 10-2.015 Employers' Withholding of Tax. The director proposes to amend section (10), subsections (21)(B), (22)(A) and (B), (23)(A), and sections (27) and (30).

PURPOSE: The purpose of this amendment is to bring the Form MO W-3 due date in agreement with the Internal Revenue Service due date for Form W-3, change the threshold for monthly filers and bring the retention of undeliverable employee Form W-2s in agreement with the Internal Revenue Service.

(10) Resident of Missouri Employed in Another State. A Missouri resident paying income tax to another state because of employment in that state may file a Withholding Affidavit For Missouri Residents, Form MO W-4C. [which provides for exclusion from withholding when fifty percent (50%) or more of the services are performed in a state other than Missouri. The original copy must be mailed to the Department of Revenue and the duplicate retained by the employer as the basis for not withholding from the employee's wages. When a Missouri resident is employed less than fifty percent (50%) in another state having a state income tax, only income received for services performed in Missouri or another state not having a state income tax is subject to Missouri withholding. In determining the amount of tax to be withheld, the employer should use only the balance of income not subject to withholding by another state.] If the

employee does not complete Form MO W-4C, the employer may withhold Missouri taxes on all services performed, regardless of where performed. All income received for services performed in another state not having a state income tax is subject to Missouri withholding. If services are performed partly within and partly without the state, only wages paid for that portion of the services performed within Missouri are subject to Missouri withholding tax, provided that the services performed in the other state are subject to the other state's withholding provisions. If a service is partly within and partly without Missouri and only a portion of an employee's wages is subject to Missouri withholding tax, then the amount of Missouri tax required to be withheld is calculated using a percentage of the amount listed in the withholding tables. The calculation begins by determining the amount that would be withheld if all the wages were subject to Missouri withholding. This amount is then multiplied by a percent, which is determined by dividing the wages subject to Missouri withholding tax by the total federal wages.

(21) Filing Frequency Requirements. Missouri withholding returns must be filed by the due date as long as an account is maintained with the Missouri Department of Revenue, even if there was no payroll for the reporting period. Returns must be filed each reporting period, even though there may not have been any tax withheld. There are four (4) filing frequencies: quarter-monthly, monthly, quarterly and annually (section 143.221 and 143.225, RSMo). A newly registered employer is initially assigned a filing frequency on the basis of his/her estimation of future withholdings. If the assigned filing frequency differs from the filing requirements established by statute, it is the employer's responsibility to immediately notify the Department of Revenue. The time for filing shall be as follows:

(B) Monthly. Employers required to withhold [two] five hundred [fifty] dollars [(\$250)] (\$500) per month for at least two (2) months during the preceding twelve (12) months shall file on a monthly basis;

(22) Reporting Requirement. Every employer withholding Missouri income tax from employee's wages is required by statute to report and remit the tax to the state of Missouri on the Missouri Form MO-941. See regulation 12 CSR 10-2.016 for information on filing a Form MO-941P to remit required payments on Quarter-Monthly accounts.

(A) A separate reporting form must be filed for each reporting period. A personalized booklet of reporting forms detailing the employer's name, address, employer identification number, filing frequency and due date is provided to each active account. The voucher booklet supplied to an employer required to pay on a quarter-monthly basis also includes payment vouchers Form MO-941P, for the four (4) quarter-monthly periods. If an employer misplaces, damages or does not receive the necessary reporting forms, replacement forms should be requested, allowing sufficient time to file a timely return. If a blank form is used, the employer's name, address and identification number must appear as filed on previous returns and the period for which the remittance is made must be indicated. Failure to receive reporting forms does not relieve the employer of responsibility to report and remit tax withheld. If an employer temporarily ceases to pay wages a return must be filed for each period indicating that no tax was withheld. Failure to do so will result in the issuance of [estimated billing] non-filer notices.

(B) On or before [January 31] February 28, or with the final return filed at an earlier date, each employer must file a Form MO W-3 (Transmittal of Wage and Tax Statements) and copies of all withholding tax statements, Form W-2/1099R, copy 1, for the year. Do not include the fourth quarter or twelfth month return with the Form W-2(s)/1099R(s) and Form MO W-3. The last

annual remittance must be sent separately with Form MO-941. Large numbers of forms may be forwarded to the Department of Revenue in packages of convenient size. Each package must be identified with the name and account number of the employer and the packages must be consecutively numbered. Any employee's copies of the Withholding Statement (Form W-2/1099R) which cannot be delivered to the employee after reasonable effort is exerted, *[should be transmitted to the Missouri Department of Revenue by July 31 of the next calendar year. Any branch establishments of the employer may send any undeliverable employee's copies directly to the Department of Revenue.]* **must be kept by the employer for at least four (4) years.** The Department of Revenue will accept computer produced magnetic tape records instead of the paper Form W-2/1099R. The employer must meet tape data specifications which are established by the Department of Revenue. **The department follows specifications outlined in Social Security Administration Publication 42-007. Employers must also include the Supplemental record (Code S or Code 1 S).**

(23) Time and Place for Filing Returns and Remitting Tax.

(A) All returns and remittances must be filed with the Department of Revenue at the specific address indicated on the *[voucher]* form. The dates on which the returns and payments are due are as follows:

1. Quarter-Monthly (see 12 CSR 10-2.016). The quarter-monthly periods are: the first seven (7) days of a calendar month; the eighth to the fifteenth day of a calendar month; the sixteenth to the twenty-second day of a calendar month; and the twenty-third day through the last day of a calendar month. Payments must be mailed within three (3) banking days after the end of the quarter-monthly period or received by the Department of Revenue or its designated depository within four (4) banking days after the end of the quarter-monthly period. A monthly return (MO-941) reconciling the quarter-monthly payments and detailing any underpayment of tax is due by the fifteenth day of the following month except for the third month of a quarter in which case the MO-941 is due the last day of the succeeding month;

2. Monthly. Return and payment must be made by the fifteenth day of the following month except for the third month of a quarter in which case the return is due the last day of the succeeding month;

3. Quarterly. Return and payment must be made on or before the last day of the month following the close of the calendar quarter; and

4. Annually. Return and payment must be made on or before January 31 of the succeeding year.

(27) Failure to Pay Taxes Withheld—Special Deposits. Any employer who fails to remit income tax withheld, or to file tax returns as required, may be required to deposit the taxes in a special trust account for Missouri (see *[sub]*/section 32.052, RSMo). Penalties are provided for failure to make payment. If the director of revenue finds that the collection of taxes required to be deducted and withheld by an employer may be jeopardized by delay, s/he may require the employer to remit the tax or make a return at any time. A lien outstanding with regard to any tax administered by the director shall be a sufficient basis for this action (see *[sub]*/section 143.221.4, RSMo). In addition, any officer, director, statutory trustee or employee of any corporation who has direct control, supervision or responsibility for filing returns and making payments of the tax, who fails to file and make payment, may be personally assessed the tax, including interest, additions to tax and penalties pursuant to *[sub]*/section 143.241.2, RSMo.

(30) Penalties, Interest and Additions to Tax.

(B) An employer's failure to file a timely return, unless due to reasonable cause and not due to willful neglect, will result in additions to tax of five percent (5%) per month or a fraction of a month

not to exceed twenty-five percent (25%) pursuant to *[subdivision 143.741(1)]* section 143.741.1, RSMo.

(C) A deficiency is subject to an addition to tax of five percent (5%) if the delinquency is due to negligence or disregard of rules, or fifty percent (50%) if the deficiency is due to fraud pursuant to *[subdivision 143.751(1) and (2)]* section 143.751.1 and .2, RSMo.

(D) Failure to timely pay tax requires a five percent (5%) addition to tax pursuant to *[subdivision 143.751(3)]* section 143.751.3, RSMo.

(E) A quarter-monthly penalty of five percent (5%*[O]*) in lieu of all other penalties, interest or addition*[n]*s to tax will be imposed on a quarter-monthly period underpayment pursuant to section 143.225.6, RSMo.

(F) A person who willfully fails to collect, account for or pay withholding taxes is subject to a penalty equal to the amount not paid to the state, pursuant to section 143.751*[(4)]*.4, RSMo. In addition, any officer, director, statutory trustee or employee of any corporation who has direct control, supervision or responsibility for filing returns and making payments of the tax, who fails to file and make payment, may be personally assessed the tax, including interest, additions to tax and penalties pursuant to *[sub]*/section 143.241.1, RSMo.

(G) *[Criminal penalties]* Penalties for criminal offenses are also provided *[in]* throughout sections 143.911–143.951, RSMo.

(I) Failure to file a timely Wage and Tax Statement, W-2, is subject to a penalty of two dollars (\$2) per statement not to exceed one thousand dollars (\$1,000) unless the failure is due to reasonable cause and not willful neglect pursuant to *[subdivision 143.741(2)]* section 143.741.2, RSMo.

AUTHORITY: section 143.961, RSMo 1994. This rule was previously filed as "Missouri Employer's Tax Guide" Feb. 20, 1973, effective March 2, 1973. Original rule filed Jan. 29, 1974, effective Feb. 8, 1974. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Nov. 30, 1999, effective Dec. 10, 1999, expires June 6, 2000. Amended: Filed Nov. 30, 1999.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 101—Sales/Use Tax—Nature of Tax**

PROPOSED RULE

12 CSR 10-101.500 Burden of Proof

PURPOSE: Section 136.300, RSMo, addresses which party has the burden of proof on any factual issue relevant to ascertaining the liability of a taxpayer. Sections 32.200, article V, section 2; 144.210; and 144.635, RSMo, also address the burden of proof and in particular the use of exemption certificates to meet the burden. Section 621.050, RSMo, addresses which party has the burden of proof in a proceeding before the Administrative Hearing

Commission. This rule explains how these rules work together to determine which party has the burden of proof in a dispute involving sales or use tax.

(1) In general, the taxpayer has the burden of proof except in specific circumstances.

(2) Definition of Terms.

(A) Burden of proof—Burden of persuading the finder of fact that the existence of a fact is more probable than the nonexistence.

(B) Good faith—Honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry.

(3) Basic Application of Burden of Proof.

(A) The department always has the burden of proof regarding—

1. Whether the taxpayer has been guilty of fraud with attempt to evade tax; and

2. Whether the taxpayer is liable as the transferee of property of another taxpayer.

(B) The taxpayer always has the burden of proof on any issue with respect to the applicability of any tax exemption or credit.

(C) The taxpayer has the burden of proof on all other issues unless—

1. The taxpayer has produced evidence establishing there is a reasonable dispute with respect to the issue;

2. The taxpayer has adequate records of its transactions and provides the Department of Revenue reasonable access to these records;

3. In the case of a partnership, corporation or trust, the net worth of the taxpayer does not exceed seven (7) million dollars and the taxpayer does not have more than five hundred (500) employees at the time the final decision of the director of the Department of Revenue is issued; and

4. If all three (3) conditions are met, the department has the burden of proof with respect to any factual issue relevant to ascertaining the liability of a taxpayer.

(D) A taxpayer can generally meet its burden of proof by obtaining and maintaining exemption certificates signed by the purchaser or its agent. An exemption certificate that is not obtained in good faith, however, will not satisfy the burden of proof. Even when a taxpayer does not have a valid exemption certificate, it may prove that the transaction is exempt from sales and use tax by proof admissible under the applicable rules of evidence.

(4) Examples.

(A) The department alleges that a taxpayer fabricated exemption certificates in order to evade sales tax. The department has the burden of proof.

(B) The taxpayer sells tangible personal property and claims that the sale was exempt from tax. The taxpayer always has the burden of proof.

(C) The taxpayer sells tangible personal property and claims that it was a sale for resale. The taxpayer presents a valid exemption certificate. The taxpayer has met its burden of proof.

(D) A jeweler sells an expensive diamond ring to his neighbor, known to the taxpayer not to be in the jewelry business. The neighbor presents an exemption certificate claiming that the ring was purchased for resale and therefore exempt from tax. The jeweler may not accept the exemption certificate without further inquiry.

(E) A jeweler sells an expensive diamond ring to a purchaser unknown to the jeweler but does not receive an exemption certificate. On a claim that this was an exempt sale for resale, the jeweler has the burden of proof and may prove that the sale was exempt through testimony and documents admissible under the rules of evidence.

(F) A jeweler sells an expensive diamond ring to a purchaser unknown to the jeweler but does not receive an exemption certificate. The jeweler presents to the department an invoice for the diamond ring showing it was sold to a wholesale jeweler. The burden of proof shifts to the department, unless the jeweler is a partnership, corporation or trust with a net worth of more than seven (7) million dollars or with more than five (500) hundred employees.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Nov. 18, 1999.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

PROPOSED RULE

12 CSR 10-110.900 Farm Machinery and Equipment Exemptions

PURPOSE: Sections 144.030.2(22), 144.045.1 and 144.047, RSMo, exempt certain farm machinery, equipment, repair parts and lubricants from taxation. This rule explains which items qualify for these exemptions.

(1) In general, the purchase of farm machinery, equipment, repair parts and supplies used exclusively and directly for producing crops, raising and feeding livestock, fish or poultry or producing milk for ultimate sale at retail is exempt from tax.

(2) Definition of Terms.

(A) Farm machinery—Machinery and equipment used directly and exclusively in the agricultural production process.

(B) Repair and replacement parts—Items of tangible personal property that are components of exempt farm machinery and equipment. Included in the repair and replacement part category are batteries, tires, fan belts, mufflers, spark plugs, oil filters, plow points, standard type motors and cutting parts.

(3) Basic Application of Exemption.

(A) To qualify for exemption pursuant to section 144.030.2(22), RSMo, items purchased must be—

1. Used exclusively for agricultural purposes;

2. Used on land owned or leased for the purpose of producing farm products;

3. Used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail. The term “used directly” encompasses items that are used in some manner prior to the actual commencement of production, during production, or in some manner after the production has terminated. In determining whether items are used directly, consideration must be given to the following factors:

A. Where the items in question are used;

B. When the items in question are used; and

C. How the items in question are used to produce a farm product; and

4. Farm machinery or equipment that meet these requirements are exempt from tax, as are repair or replacement parts thereon and lubricants used exclusively for such farm machinery or equipment and one-half (1/2) of any diesel fuel used in such machinery or equipment.

(B) Pursuant to section 144.045.1, RSMo, farm machinery or equipment that would otherwise qualify as exempt farm machinery and equipment will not lose its exempt status merely because the machinery or equipment is attached to a vehicle or real property. Such equipment includes, but is not limited to, a grinder mixer mounted on a vehicle or special livestock flooring. When exempt farm machinery or equipment attached to a motor vehicle is sold with the motor vehicle, the part of the total sales price attributable to the farm machinery or equipment is exempt from tax if the farm machinery or equipment is separately invoiced.

(C) Pursuant to section 144.047, RSMo, farm machinery includes aircraft used solely for aerial application of agricultural chemicals.

(D) Pursuant to section 144.030.2(34), RSMo, all sales of grain bins for storage of grain for resale are exempt; however, parts purchased separately for these bins are not exempt. Grain bins and all parts purchased that qualify as farm machinery and equipment are exempt.

(E) The fact that particular items may be considered to be essential or necessary will not automatically entitle them to exemption. The following categories of items are excluded from the meaning of the term farm machinery and farm equipment and are subject to tax:

1. Under no circumstances can a motor vehicle or trailer ever be treated as tax exempt farm machinery. The terms motor vehicle and trailer are defined by the titling and licensing laws of Missouri (Chapter 301);

2. Containers and storage devices such as oil and gas storage tanks, pails, buckets and cans;

3. Hand tools and hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks, shovels, brooms, wrenches, pliers and grease guns;

4. Consumable items such as antifreeze, freon, ether, and starter fluid;

5. Attachments and accessories not essential to the operation of the machinery itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air-conditioning units, cabs, deluxe seats, tool or utility boxes and lubricators;

6. Equipment used in farm management such as communications and office equipment, repair, service, security or fire protection equipment;

7. Drainage tile, fencing material, building materials, general heating, lighting and ventilation equipment for nonproduction areas; and

8. Machinery and equipment used for a dual purpose, one purpose being agricultural and the other being nonagricultural are not exempt.

(F) Schedule A is a list of items of farm machinery and equipment which will usually be exempt if used exclusively for agricultural purposes on land owned or leased for the purpose of producing farm products and used directly in producing farm products or livestock to be sold ultimately at retail.

**Schedule A
Usually Exempt Items**

Artificial insemination equipment
Augers
Bale loader
Bale transportation equipment

Baler twine
Baler wire
Balers
Batteries for farm machinery and equipment
Bedding used in production of livestock or poultry for food or fiber
Binder twine
Binders
Brooders
Bulk feed storage tanks
Bulk milk coolers
Bulk milk tanks
Bulldozers used exclusively in agricultural production
Calcium for tires
Calf weaners and feeders
Cattle currying and oiling machine
Cattle feeder, portable
Chain saws for commercial use in harvesting timber, lumber and in orchard pruning
Chicken pluckers
Choppers
Combines
Conveyors, portable
Corn pickers
Crawlers, tractor
Crushers
Cultipackers
Cultivators
Curtains and curtain controls for livestock and poultry confinement areas
Debeakers for productive animals
Dehorners for productive animals
Discs
Drags
Dryers
Dusters
Egg handling equipment
Ensilage cutters
Fans, livestock and poultry
Farm tractors
Farm wagons
Farrowing houses, portable
Farrowing crates
Feed carts
Feed grinders/mixers
Feed storage bins
Feeders
Fertilizer distributors
Flooring slats
Foggers
Forage boxes
Forage harvester
Fruit graters
Fruit harvesters
Generators
Gestation crates
Grain augers
Grain bins for storage of grain for resale (but not separately billed parts or add-ons to these grain bins)
Grain binders
Grain conveyors
Grain drills
Grain elevators, portable
Grain handling equipment
Grain planters
Greases and oils
Harrows (including spring-tooth harrow)
Hay loaders

Head gates	Automobiles
Heaters, livestock and poultry	Axes
Hog feeders, portable	Barn ventilators
Hoists, farm	Brooms
Husking machines	Brushes
Hydraulic fluid	Building materials and supplies
Hydro-coolers	Bulldozers
Incubators	Cement
Irrigation equipment	Chain saws
Livestock feeding, watering and handling equipment	Cleansing agents and materials
Lubricating oils and grease	Construction tools
Manure handling equipment (including front and rear-end loaders and blades)	Ear tags
Manure spreaders	Electrical wiring
Milk cans	Equipment and supplies for home or personal use
Milk coolers	Ether
Milk strainers	Fence building tools
Milking equipment (including bulk milk refrigerators, coolers and tanks)	Fence posts
Milking machine	Field toilets
Mowers, hay and rotary blade used exclusively for agricultural purposes	Fire prevention equipment
Panels, livestock	Freon
Pickers	Fuel additives
Planters	Garden hose
Plows	Garden rakes and hoes
Poultry feeder, portable	Gasoline tanks and pumps
Pruning and picking equipment	Golf carts
Repair and replacement parts for exempt machinery	Hammers
Rollers	Hand tools
Root vegetable harvesters	Hog ringers
Rotary hoes	Hog rings
Scales (not truck scales)	Lamps
Seed cleaners	Lanterns
Seed planters	Lawnmowers
Seeders	Light bulbs
Shellers	Marking chalk
Silo unloaders	Nails
Sorters	Office supplies and equipment
Sowers	Packing room supplies
Sprayers	Paint and decals
Spreaders	Personal property installed in or used in housing for farm workers
Sprinkler systems, livestock and poultry	Posthole diggers (except commercial use in tree farms)
Squeeze chutes	Pumps for household or lawn use
Subsoiler	Pumps, gasoline
Threshing machines	Refrigerators for home use
Tillers	Repair tools
Tires for exempt machinery	Road maintenance equipment
Tractors, farm	Road scrapers
Vacuum coolers	Roofing
Vegetable graders	Sanders
Vegetable washers	Shovels
Vegetable waxers	Silos
Wagons, farm	Small tools
Washers, fruit, vegetable and egg	Snow fence
Waxers	Snowplows and snow equipment
Weeders	Staples
	Starting fluids
	Supplies for home or personal use
	Tanks, air
	Tanks, gasoline
	Tools for repair construction
	Tractors, garden
	Truck beds
	Water hose
	Welding equipment
	Wire, fencing
	Wrenches

(G) Schedule B is a list of items, which are usually taxable.

Schedule B
Usually Taxable Items

Acetylene torches
Air compressors
Air tanks
All-terrain vehicles (3-, 4- and 6-wheel)
Antifreeze

(4) Examples.

(A) An implement dealer sells a soilmoover to a farmer. The soilmoover is going to be used on low-lying agricultural land exclusively for the purpose of controlling drainage. The sale of the soilmoover is exempt.

(B) A farmer purchases a combine. The farmer later purchases an AM/FM radio to be installed on the combine. The farmer's purchase of the combine is exempt; however, the farmer's purchase of the AM/FM radio is taxable. If the radio had been a part of the assembled unit, the total price for the combine would have been exempt.

(C) A farmer purchases a lawnmower. The farmer uses the lawnmower to mow around grain bins, as well as mow his lawn. The purchase of the lawnmower is subject to tax, since the lawnmower is not used exclusively and directly for agricultural production.

(D) A farmer purchases a water chiller for use to control the climate inside the hatcher and setters. The water chiller is also used to cool the administrative areas in the hatchery. The purchase of the water chiller is subject to tax, since it is not used exclusively for agricultural production.

(E) A farmer takes his tractor to the implement dealer for routine maintenance, which includes changing the oil, filters and antifreeze. The sale of the oil and filters would be exempt; however, the antifreeze would be subject to tax.

(F) A farmer buys a bale spike to be installed on his pickup truck. The bale spike is not subject to tax.

(G) A farm supply store sells commercial rabbitry equipment, such as feeders, nest boxes and wire hanging cages used for rabbit cages and feeders, to a farmer who raises rabbits in confinement for human consumption. These items are not subject to tax.

AUTHORITY: sections 144.270 and 144.705, RSMo, (1994). Original rule filed Nov. 18, 1999.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty days after publication of this notice on the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery and
Equipment Exemptions**

PROPOSED RULE

12 CSR 10-111.060 Material Recovery Processing Plant Exemption

PURPOSE: Section 144.030.2(4), RSMo, exempts from taxation machinery and equipment and certain materials and supplies used to establish new, or to replace or expand existing, material recovery processing plants in this state. This rule explains the elements that must be met in order to qualify for the exemption.

(1) In general, the purchase of machinery and equipment, and the materials and supplies required solely for the operation, installation or construction of such machinery and equipment, is exempt from tax if used to establish new, or to replace or expand existing, material recovery processing plants in this state.

(2) Definition of Terms.

(A) Material recovery processing plant—A facility which converts recovered materials into a new product, or to a different form which is used in producing a new product, and includes facilities or equipment used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but does not include motor vehicles used on highways.

(B) Recovered materials—Those materials that have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not they require subsequent separation and processing.

(3) Basic Application of Exemption.

(A) Machinery and equipment for new, or to replace or expand existing, material recovery processing plant—Purchases of machinery and equipment used to establish new, or to expand existing, material recovery processing plants in this state are not subject to tax. Purchases of the materials and supplies required solely for the operation, installation or construction of such machinery and equipment are not subject to tax.

(B) New, replacement or expanded plant—Machinery and equipment are exempt if used to establish a new, or replace or expand an existing, material recovery processing plant. Materials and supplies required solely for the operation, installation or construction of machinery and equipment used in establishing a new plant, or in replacing or expanding an existing plant are exempt.

(4) Examples.

(A) A new company purchases machinery and equipment to retread old tires. The company purchases old tires and with the use of the new machinery and equipment, it produces retread tires for sale. The machinery and equipment may be purchased under the material recovery processing plant exemption.

(B) A taxpayer recycles fuel. It processes both solid and liquid waste materials for use as a fuel in its cement manufacturing operation. The taxpayer uses shredders and pulverizers to grind the solid waste materials into sizes appropriate for processing. The taxpayer's mobile and conveyor systems are used to transport the solid and liquid wastes to different processes performed on the materials in taxpayer's facility. The fuel recycling facility would qualify as a material recovery processing plant because it converts recovered materials, solid and liquid waste materials, into a new product, fuels, that are then used to manufacture a new product, cement.

(C) Assuming the same facts as in example (4)(B), the taxpayer purchases lubricants to operate its machinery and equipment. Because the lubricants are required solely for the operation of the machinery and equipment, they are not subject to tax.

(D) Taxpayer does not operate a material recovery processing plant but operates a facility used exclusively for the collection of recovered materials for delivery to a material recovery processing plant. Taxpayer purchases storage bins, conveyors and a special truck for hauling waste material to and from its facility. The storage bins and conveyors would be exempt from tax. The special truck would be considered a motor vehicle pursuant to section 301.010, RSMo, and would be subject to tax.

(E) A taxpayer operates a recycling business that purchases aluminum, paper and other products to be bundled and then sold to facilities which use them as raw materials to produce new and different products. A taxpayer purchases loaders, baling machines and crushing equipment to prepare the materials for sale and shipping. The loaders push the materials into the balers, which com-