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**Rules of**  
**Department of Revenue**  
**Division 10—Director of Revenue**  
**Chapter 101—Sales/Use Tax—Nature of Tax**

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## Title 12—DEPARTMENT OF REVENUE

### Division 10—Director of Revenue Chapter 101—Sales/Use Tax—Nature of Tax

#### 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 director 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 credit.

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

1. The taxpayer has produced sufficient 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; and

3. If both conditions are met, the director 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 that a sale of tangible personal property, services, substances, or things was not a taxable sale at retail by obtaining and maintaining an exemption certificate 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 director alleges that a taxpayer fraudulently fabricated exemption certificates in order to evade sales tax. The director has the burden of proof.

(B) A person is a donee, heir, legatee, devisee, or distributee of a taxpayer that owes sales tax. The director issues assessments to this person as a transferee. The director has the burden of proof to show the person is a transferee of the delinquent taxpayer.

(C) An audited taxpayer is assessed unpaid sales tax on unreported sales of meals it provided to customers. The taxpayer has the burden of proof to supply the applicable documentation that it correctly collected and remitted sales tax on the meals provided to its customers. If the taxpayer had adequate records and provided those to the department during the audit, and later produces evidence establishing that the unreported sales of meals were to non-profit customers that presented exemption certificates to the taxpayer at the time of sale, the burden of proof then shifts to the director provided the exemption certificates were received in good faith.

(D) An out-of-state vendor registered to collect use tax is assessed use tax on the sale of a computer to a Missouri customer. The vendor has the burden of proof to supply the applicable documentation that it correctly collected and remitted use tax on the sales of tangible personal property. If the vendor had adequate records and provided those to the department, the burden of proof then shifts to the director.

(E) A taxpayer is assessed use tax on its purchase of a wood lathe that it purchased out-of-state. The taxpayer has the burden of proof to supply the applicable documentation that it purchased tangible personal property that was exempt from sales or use tax. If the taxpayer has adequate records which it made available to the department and produces evidence that the lathe is used to manufacture furniture later sold for ultimate use or consumption, the burden of proof then shifts to the director.

(F) A taxpayer sells tangible personal property and claims that it was a sale for resale. The taxpayer presents a valid resale exemption certificate that was accepted in good faith. The taxpayer has met its burden

of proof.

(G) 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.

(H) A jeweler sells an expensive diamond ring to a purchaser unknown to the jeweler, but does not receive an exemption certificate. If the jeweler fails to collect and remit tax, upon assessment by the director 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.

(I) 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 director.

*AUTHORITY: section 144.270, RSMo 2016.\* Original rule filed Nov. 18, 1999, effective June 30, 2000. Amended: Filed Oct. 2, 2018, effective April 30, 2019.*

*\*Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961, 2008.*

*Blevins Asphalt & Construction Co. v. Director of Revenue, 938 S.W.2d 899 (Mo. banc 1997). The taxpayer has the burden of proof in most cases. "Good faith," in the context of exemption certificates, requires honesty of intention and freedom from knowledge of circumstances that ought to put the holder upon inquiry. Accord Conagra Poultry Co. v. Director of Revenue, 862 S.W.2d 915 (Mo. banc 1993); Gammaitoni v. Director of Revenue, 786 S.W.2d 126 (Mo. banc 1990).*

#### 12 CSR 10-101.600 Successor Liability

*PURPOSE: Section 144.150, RSMo makes a person acquiring a business, or the stock of goods or assets of a business, liable for the seller's tax liability. This rule explains how that liability is incurred and what steps must be taken in order for a purchaser to be relieved of this liability.*

(1) In general, any purchaser of substantially all of a business or stock of goods of a business is liable for the seller's tax liability. The purchaser is required to withhold and remit to the department sufficient purchase money to pay the seller's tax liability upon the purchase



of the business or stock of goods. The purchaser is relieved of liability by receiving from the seller a receipt from the director of revenue showing that the taxes have been paid.

(2) Definition of Terms.

(A) Purchase money—any consideration flowing directly, or indirectly through intermediate parties or otherwise, to a seller and is not limited to actual cash transferring directly to the seller.

(B) Stock of goods—the amount of movable personal property and/or inventory of a business.

(C) Purchaser—any “person” as defined in section 144.010.1(6), RSMo who, directly or indirectly, purchases substantially all of a business or stock of goods.

(3) Basic Application.

(A) Any person acquiring a business should require the seller to provide a receipt from the department stating that all taxes have been paid or a certificate of no tax due issued by the department. The purchaser can rely on the department’s certificate of no tax due for one hundred twenty (120) days from issuance.

(B) If the seller does not provide a receipt or certificate of no tax due from the department, the purchaser must pay any tax due. The purchaser should withhold a sufficient amount of the purchase money to cover taxes, interest and penalties due and unpaid by all former owners or predecessors, whether immediate or not. If the purchaser does not withhold and remit a sufficient amount, the purchaser is personally liable for the unpaid taxes, interest, additions to tax and penalties accrued. To determine the amount to be withheld, the purchaser should require the seller to provide a statement from the department showing the amount of taxes, interest, additions to tax or penalties due and owing, including the date of the last payment for such taxes, interest, additions to tax or penalties.

(C) A purchaser who obtains a certificate of no tax due or withholds and pays the department a sufficient amount of the purchase money to cover the amount of tax, interest, additions to tax and penalties is not liable for additional tax owed as the result of a subsequent audit of the tax periods covered by the previous owner. The previous owner remains liable for the tax.

(D) Any creditor acquiring the business or stock of goods as a result of an enforcement action, or any immediate or subsequent purchaser from such creditor, is not liable for the taxes, interest, additions to tax and penalties

of the previous owner. The previous owner remains liable.

(E) Reliance on an affidavit pursuant to Missouri’s Bulk Transfer Act stating that there were no creditors of the business will not relieve a purchaser from a previous owner’s tax liability.

(4) Examples.

(A) A taxpayer purchased an ice cream business. The previous owner had a tax liability with the department. The taxpayer required the previous owner to provide a statement from the department listing the amount owed. The taxpayer withheld the amount of the tax liability from the purchase price. The previous owner then provided a statement from the department showing the tax had been paid. The taxpayer is relieved of any liability and may pay the balance of the purchase price to the previous owner. If the previous owner had not provided the statement, the taxpayer would have been required to remit the withheld money directly to the department.

(B) A motel owner with an accrued tax liability of \$18,000 defaulted on a loan. The lender acquired the motel in a private settlement with the owner. A taxpayer subsequently purchased the motel from the lender without receiving from the lender a receipt from the director of revenue showing that the amount of taxes, interest to date and penalties have been paid or a certificate stating that no taxes were due. The lender and the taxpayer are personally liable for the unpaid tax, penalty and interest to date on the motel. If the lender had acquired the motel through an enforcement action, the taxpayer would not have been liable for the previous owner’s tax.

(C) A taxpayer acquired a car and some records from a business, which were not substantially all of the business or stock of goods of the business. The taxpayer is not liable for any tax liability of the previous owner.

*AUTHORITY: sections 144.150 and 144.270, RSMo 2000.\* Original rule filed Nov. 9, 2000, effective May 30, 2001. Amended: Filed Aug. 26, 2005, effective Feb. 28, 2006.*

*\*Original authority: 144.150, RSMo 1939, amended 1941, 1943, 1945, 1961, 1987, 1990, 1994 and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

*Surrey’s on the Plaza, Inc. v. Director of Revenue, 128 S.W. 3d 508 (Mo. banc 2004). The Court held that a successor is liable for tax owed by its predecessor unless the successor both withholds the amount of the tax from the purchase price and remits the amount withheld to the director. The Court also held that a business owner sells “all or*

*substantially all of his or their business or stock of goods” when it sells all or substantially all of the assets of a distinct business or location, even if that does not constitute all or substantially all of the seller’s assets.*

*Air Management Supply, Inc. v. Director of Revenue (AHC 1998). The taxpayer purchased a car and some records from its predecessor. The AHC ruled that in order to be liable as a successor, a taxpayer must purchase all or substantially all of a business or stock of goods.*

*Winchell’s Donuts Houses Operating Co. v. Director of Revenue (AHC 1998). The taxpayer entered into a lease and license agreement of a donut shop with an individual. The licensing agreement required the individual to pay all taxes incurred in the operation of the business. The individual failed to pay federal taxes and the IRS enforced its lien, locking the doors of the donut shop. The taxpayer was forced to pay for the food inventory to protect its interest in the real property and equipment. Although taxpayer acquired the stock of goods (food inventory), because they were acquired as a result of an enforcement action by a creditor, the taxpayer was not liable as a successor.*

*Kim Poore v. Director of Revenue (AHC 1997). The taxpayer maintained that the seller of the business had committed fraud by not disclosing certain encumbrances. The AHC held that the taxpayer was nevertheless liable as a successor.*

*Stuffin’s Corp. v. Director of Revenue (AHC 1993). The AHC held that the successor liability imposed upon a purchaser may be greater than the purchase price paid for the business.*

**12 CSR 10-101.700 Bankruptcy and Other Court Appointments**

*PURPOSE: This rule explains the treatment under federal law of sales and use tax in a bankruptcy or other court appointments, and the liability of trustees, assignees and receivers for sales and use tax.*

(1) In general, any trustee, assignee or receiver must notify the department upon being appointed to such position by the court. The trustee, assignee or receiver is responsible for sales and use tax on behalf of the debtor.

(2) Basic Application.



(A) All outstanding sales and use tax, interest and penalties due the state from a debtor must be paid before any distribution to general unsecured creditors.

(B) When a court appoints any person, whether trustee, assignee or receiver, to take over any business and operate or liquidate it, the person appointed must collect and remit sales tax for the debtor during such appointment. The person appointed must use the sales tax license of the debtor during such appointment.

(C) The person appointed is liable for any tax, interest or penalties not paid as required by subsections (2)(A) and (B).

*AUTHORITY: sections 144.270 and 144.705, RSMo 2000.\* Original rule filed Nov. 7, 2005, effective May 30, 2006.*

*\*Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961 and 144.705, RSMo 1959.*