
Rules of Department of Revenue

Division 10—Director of Revenue

Chapter 3—State Sales Tax

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**Title 12—DEPARTMENT OF
REVENUE**

**Division 10—Director of
Revenue
Chapter 3—State Sales Tax**

12 CSR 10-3.002 Rules

PURPOSE: This rule is a general statement describing the nature of all sales tax rules.

(1) Rules are published in order to exemplify the sales tax statute and to inform the reader as to the interpretation which the Department of Revenue places upon the statute in the course of its administration and enforcement of the sales tax law itself. Any interpretive rule is subject to immediate change without prior notice to reflect statutory amendments and the final decisions of the Administrative Hearing Commission and Missouri courts.

(2) If a particular question or problem is considered and covered by these rules, it is not necessary that the taxpayer be issued a ruling on that question or problem.

(3) The rules issued by the Department of Revenue are intended to convey general principles, concepts and guidelines to the lay reader and the audit staff personnel of the department. They are intended to supplement and exemplify the statute and not to replace it.

(4) Particular facts and circumstances surrounding any given transaction may vary greatly and the reader whose particular question or problem is not covered by these rules is urged to consult the statute itself, seek advice from competent tax practitioners and, when necessary, seek a written revenue ruling from the Department of Revenue.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 270-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 6, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.003 Rulings
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 270-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. This rule was previously filed as 12 CSR 10-3.560. Amended: Filed Aug. 13,

1980, effective Jan. 1, 1981. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

State ex rel. Thompson-Stearns-Roger v. Schaffner, 489 SW2d 207 (Mo. banc 1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.

12 CSR 10-3.004 Isolated or Occasional Sales
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 88 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 6, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

In Staley v. Missouri Director of Revenue, 623 SW2d 246 (Mo. banc 1981), a partnership contracted to sell all furnishings in a one-time liquidation sale. The court found since section 144.010.1(2) specifically provides that "business" and an "isolated occasional sale" are distinct terms, no tax is due on isolated or occasional liquidation sales by parties not engaged in the business of selling items sold.

12 CSR 10-3.005 Isolated or Occasional Sales by Businesses
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Aug. 6, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

In Staley v. Missouri Director of Revenue, 623 SW2d 246 (Mo. banc 1981), a partnership contracted to sell all furnishings in a one-time liquidation sale. The court found since section 144.010.1(2) specifically pro-

vides that "business" and an "isolated or occasional sale" are distinct terms, no tax is due on isolated or occasional liquidation sales by parties not engaged in the business of selling items sold.

Loethen Amusement, Inc. v. Director of Revenue, Case No. RS-86-0130 (A.H.C. 10/2/87). The Administrative Hearing Commission held this transaction is subject to Missouri sales tax in that there is no exemption for partial liquidation of a business. The exemption provisions contained in 144.011(2), RSMo and 12 CSR 10-3.005 relate only to complete liquidation of a business.

12 CSR 10-3.006 Isolated or Occasional Sales vs. Doing Business—Examples
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 6, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

In Staley v. Missouri Director of Revenue, 623 SW2d 246 (Mo. banc 1981), a partnership contracted to sell all furnishings in a one-time liquidation sale. The court found since section 144.010.1(2) specifically provides that "business" and an "isolated or occasional sale" are distinct terms, no tax is due on isolated or occasional liquidation sales by parties not engaged in the business of selling items sold.

12 CSR 10-3.007 Partial Liquidation of Trade or Business
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994.* Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.008 Manufacturers and Wholesalers
(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 27 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

12 CSR 10-3.010 Fireworks and Other Seasonal Businesses

PURPOSE: This rule interprets the sales tax law as it applies to the sellers of fireworks and others engaged in seasonal businesses and interprets and applies section 144.010, RSMo.

(1) Sales of fireworks or other items will not be treated under the isolated or occasional sale exception merely because the sales are for a short duration or are seasonal. Persons who engage in the business of selling these items at retail are required to obtain a Missouri retail sales tax license and to otherwise comply with the sales tax law.

AUTHORITY: section 144.270, RSMo 1994. * This rule was previously filed as rule no. 94 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.012 Sellers Subject To Sales Tax

(Rescinded August 9, 1993)

AUTHORITY: section 144.270, RSMo 1986. This rule was previously filed as rule no. 28, Jan. 22, 1973, effective Feb. 1, 1973. S. T. regulation 010-5 was filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed April 29, 1983, effective Sept. 11, 1983. Emergency rescission filed Feb. 19, 1993, effective March 1, 1993, expired June 28, 1993. Rescinded: Filed Feb. 19, 1993, effective Aug. 9, 1993.

State ex rel. Thompson-Stearns-Roger v. Schaffner, 489 SW2d 207 (Mo. banc 1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.

Martin Coin Co. of St. Louis v. Richard A. King, 665 SW2d 939 (Mo. banc 1984). The court held in *Scotchmen's Coin Shop v. Administrative Hearing Commission*, 654 SW2d 873 (Mo. banc 1983) that sales of coins for their value as precious metal constituted the sale of personal property subject to sales tax. Martin Coin attempted to distinguish its activities from those of Scotchman's by asserting that it was an agent between two principals and that it was not a vendor, but merely a broker. Martin Coin purchased the coins in question on its own line of credit, was liable to the vendor of the coins, bore the risk of nonpayment by its customers, deposited the proceeds from the sales in its own bank account and paid the supplier for coins ordered. In the court's opinion, Martin Coin was involved in both a) the purchase of coins from the supplier and b) the sale of coins to customers. The latter constituted a taxable event. Additionally, the court noted that while Martin Coin attempted to label itself an agent, rather than a vendor, there was no evidence in the record to indicate that the vendors of the coins had any control over Martin Coin; thus a key element of agency was lacking. The court refused on procedural grounds to hear the issue which Martin Coin raised in its brief concerning invasion of the federal government's exclusive power to regulate foreign commerce.

Chase Resorts, Inc. v. Director of Revenue, Case No. RS-85-0780 (A.H.C. 7/30/87). Petitioner stores and rents boats. In conjunction with this business, Petitioner arranges 10-15 sales each year of boats stored in its slips.

The Department of Revenue assessed petitioner sales tax on the sales of these boats on the theory that petitioner was the "seller" of the boats, as defined in 144.010.1(9), RSMo.

Petitioner entered into written agreements with boat owners to arrange sale of these boats for a commission. Petitioner's responsibilities regarding these sales included publishing lists of boats for sale and showing the boats. In nearly every case, payment was made directly from the buyer to the boat owner. Petitioner never held title to the boat.

The Administrative Hearing Commission held petitioner did not act as a seller of the boats, as it did not direct who was to receive title and took physical control of the boats only when directed and then only as an agent of the owner.

Barter Systems International v. Director of Revenue, Case No. RS-84-2357 (A.H.C. 11/9/88). The taxpayer operated as one part of its business an exchange for its member

clients to barter goods and services with one another. The member-to-member trades did not involve cash, only goods and services. The taxpayer acted as a conduit between members. It notified one member when another member had some item to trade and kept records of the transactions. The selling member set the price and was responsible for remitting sales tax to the department. Taxpayer did not police the price of the goods exchanged.

The Administrative Hearing Commission concluded that the taxpayer operated a business which regularly bought and sold goods in the showroom. The taxpayer purchased goods using the clients' assets' accounts. The buying of goods using its own funds consisting of clients' assets' accounts and selling them to the customer on its own terms constituted two separate transactions, one between petitioner and the original supplier and one between petitioner and its customers. The Administrative Hearing Commission concluded that the two separate transactions could not be collapsed into one by describing petitioner as merely a conduit between its buyer and a customer (see *Martin Coin Co. of St. Louis v. King*, 665 SW2d 939 (Mo. banc 1984)).

H. Matt Dillon, d/b/a Midwest Home Satellite Systems v. Director of Revenue, Case No. RS-85-1741 (A.H.C. 12/9/88). The Administrative Hearing Commission found that sellers must obtain signatures on each individual invoice or written acknowledgment that a purchase is being made under an exemption certificate or letter if the certificate is not presented anew for each transaction; auctioneers acting for undisclosed principals are subject to sales tax as the seller of tangible personal property; and that auctioneers acting for disclosed principals must maintain satisfactory evidence of that fact.

12 CSR 10-3.014 Auctions Disclosed Principal

(Rescinded September 11, 1983)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 28 Jan. 22, 1973, effective Feb. 1, 1973, S.T. regulation 010-6 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 29, 1983, effective Sept. 11, 1983.

12 CSR 10-3.016 Consignment Sales
(Rescinded December 11, 1980)



AUTHORITY: section 144.270, RSMo 1986, S.T. regulation 010-6A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 6, 1980, effective Dec. 11, 1980.

12 CSR 10-3.017 Ticket Sales

PURPOSE: This rule clarifies what sales tax is required to be paid and collected on the sale of tickets. Applicable sales taxes are enumerated and the method of determining the tax due is specified. This rule interprets and applies sections 144.010.1(3), 144.020 and 144.080.5, RSMo.

(1) All tickets sold to permit admission to any theater, sporting event, exhibit or any other event where sales tax is required to be paid and collected must contain a statement on the face of the ticket "This ticket is subject to a four percent (4%) sales tax," as provided in section 144.020.2, RSMo.

(2) All tickets stating a single amount as the price for the ticket and containing the statement set forth in section (1) shall be subject to the sales tax on the single amount so stated and the tax rate shall be applied against that amount.

(3) If the total selling price of a ticket is intended to include state and local sales tax, the vendor must advise the purchaser of the cost of admission and the amount of tax by printing these amounts on the ticket, by posting a prominently displayed sign stating that amount or by giving other written notice.

(A) The ticket or notice must contain the following language:

Cost of admission	\$(amount)
Sales tax	\$(amount)
Ticket price	\$(amount)

(B) Otherwise, the vendor shall be subject to sales tax on all receipts and the total price of the tickets shall be considered receipts.

(4) All ticket sales are also subject to all applicable local sales taxes and all special purpose state sales taxes, which may now be or become applicable to these sales. The seller may include an additional statement that the ticket is subject to all applicable sales taxes, both state and local.

(5) If the cost of admission and the applicable sales tax is not separately stated to the purchaser, as set out in section (3), the vendor shall be subject to sales tax on all receipts and the total price of the tickets shall be considered taxable receipts.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Dec. 5, 1983, effective March 11, 1984. Amended: Filed Oct. 15, 1984, effective Feb. 11, 1985.*

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

12 CSR 10-3.018 Truckers Engaged in Retail Business

PURPOSE: This rule interprets the sales tax law as it applies to truckers engaged in retail business and interprets and applies section 144.010, RSMo.

(1) Truckers and haulers selling tangible personal property such as vegetables, fruits and building supplies are making retail sales and are subject to the sales tax on the gross receipts from these sales even though the time intervals between sales activities are considerable.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 48 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.020 Finance Charges
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-8 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

In Kurtz Concrete, Inc. v. Spradling, 560 SW2d 858 (Mo. banc 1978), the court held while title ordinarily will not pass until property is delivered to buyer or reaches agreed place but title will pass notwithstanding that seller is to make delivery if that is the intention of the parties, the intention of the parties to control.

12 CSR 10-3.022 Cash and Trade Discounts
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-8A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980,

effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.023 Rebates
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 10, 1986, effective April 25, 1986. Emergency amendment filed Aug. 18, 1994, effective Aug. 21, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.024 Returned Goods
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo. 1994. S.T. regulation 010-9 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.026 Leases or Rentals Outside Missouri
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 010-9A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.027 Quarter-Monthly Period Reporting and Remitting Sales Tax
(Moved to 12 CSR 10-3.626)

12 CSR 10-3.028 Construction Contractors
(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule nos. 18 and 25 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-10 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

State ex rel. Otis Elevator Co. v. Smith, 212 SW2d 580 (Mo. banc 1948). Otis Elevator Company was in the business of designing, constructing, installing and repairing elevators in buildings. Respondent claimed there

was no sales tax due to petitioner Smith because the materials used to construct new elevators or to modify existing elevators lost their character or status as tangible personal property and became a part of the real property coincidentally with their delivery and attachment to the building. Respondent kept a title retention clause in his contract with the building contractor allowing him to retain title to the elevator until he was paid in full and if not, to remove the elevator. Judge Ellison held this clause prevented the tangible personal property from being joined with the realty. Absent this contractual clause, the court would have reached a different conclusion.

Where the contract for installation of new elevators, and reconstruction or major repairs to existing elevators whereby elevator company retains title to materials until paid, the elevator company is liable for sales tax. Had the contract not contained the title retentions clause the elevator company would not be liable for sales tax.

Where elevator company does repair work on existing elevators and supplies small parts which become part of the elevator, and does not retain title to the parts, the company is not subject to sales tax. The parts become part of the realty (see *Air Comfort Service, Inc. v. Director of Revenue*, Case No. RS-83-1982 (A.H.C. 4/25/84) and *Marsh v. Spradling*, 402 SW2d 537 (Mo. banc 1976)).

State ex rel. Thompson-Stearns-Roger v. Schaffner, 489 SW2d 207 (Mo. banc 1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.

In *Marsh v. Spradling*, 537 SW2d 402 (Mo. banc 1976), where the installation of the cabinets was an integral part of the contract for sale, the cabinets installed by contractor became part of the real estate under the doctrine of fixtures. The time of transfer of title was upon transfer of the real estate and no transfer of tangible personal property subject to the sales tax law occurred.

United States v. New Mexico, 455 U.S. 720, 102 S.Ct. 1373 (1982). New Mexico's sales tax was not invalid as applied to purchases made by contractors having contracts with the federal government for construction and repair work on government-owned property, even where title passed directly from vendors to the federal government.

Bath Antiques v. Director of Revenue, Case No. RS-80-0161 (A.H.C.8/17/82). Sales between parent corporations and subsidiary corporations are not exempt "interdepartmental transfers" as defined in 12 CSR 10-3.140(1). They are taxable sales.

Overland Steel, Inc. v. Director of Revenue, 647 SW2d 535 (Mo. banc 1983). There were two issues in this case. The first was whether a taxpayer could claim a sales tax exemption for certain steel if sold, on the grounds that the purchasers were to use it in pollution control or plant expansion projects. The second was whether or not the transfer of steel to certain customers in Kansas was a sale subject to sales tax under the Commerce Clause of the *United States Constitution*. With respect to the first issue, the court found that the taxpayer had the burden of establishing that it was exempt from sales tax, and its failure to produce sales tax exemption certificates, coupled with the dearth of testimony concerning the exempt activities of taxpayer, fails to meet that burden. With respect to the second issue, the court found that when property is purchased subject to a resale certificate, the purchaser becomes liable for sales tax if the property is not resold. In this case the court found that because the taxpayer used the steel in question in its capacity as a contractor there was no resale. Therefore, the taxable event was the taxpayer's original purchase of the steel in Missouri. It was wholly irrelevant that the construction contract pursuant to which the steel was used was performed in Kansas. There was no violation of the Commerce Clause, and therefore, taxpayer was liable for tax.

Air Comfort Service, Inc. v. Department of Revenue, Case No. RS-83-1982 (A.H.C. 4/25/84). The issue in this case as whether the mark-up which a heating and air conditioning contractor collected on replacement parts it installed was subject to sales tax. None of the parts were of such a nature that removal of the defective parts would cause substantial damage to the freehold. At issue were belts, switches, freon and certain motors. The taxpayer's position was that the parts in question became a fixture upon installation. This would result in the sales

falling under the rule for contractor's materials under which the contractor is the final purchaser and consumer of the personal property (and therefore the mark-up would not be taxable).

The commission found the determinative factor to be the point at which title passes. The court looked to the three-part test set out in *Marsh v. Spradling*, 537 SW2d 403 (Mo. banc 1976). Those elements are: 1) physical annexation to the freehold, 2) the adaption of the article to the location and 3) the intent of the annexor at the time of the annexation. The commission first found that parts (1) and (2) of the Marsh test were met because the parts were physically annexed to and adapted to the freehold. The commission then looked to *State ex rel. Otis Elevator Co. v. Smith*, 212 SW2d 580 (Mo. banc 1948) and concluded that the third test (the intent of the annexor at the time of annexation) had been met. In that case, because the elevator company had not retained title to the materials in question, it was found that the annexor intended the article to be adapted to and annexed to the freehold at the time of installation. The property in question was therefore part of the contract and the mark-up thereon was not taxable. In the case at hand, the heating and air conditioning company had not kept title to the property, and therefore the contractor's mark-up was not subject to sales tax.

Planned Systems Interiors, Ltd. v. Director of Revenue, Case No. RS-85-0065 (A.H.C. 7/1/86). The petitioner's theory was that it was making a sale to an agency of the United States government and could not be required to pay sales tax.

The Administrative Hearing Commission rejected petitioner's contentions and found that the taxpayer had a contractual relationship only as a subcontract with K & S, the primary contractor and that the taxpayer sold the workstations to K & S pursuant to their contract. Under the department's regulations 12 CSR 10-3.028 and 12 CSR 10-3.262, this sale was subject to sales tax.

Broski Brothers, Inc. v. Director of Revenue, Case No. RS-85-0063 (A.H.C.1/30/87). The Administrative Hearing Commission followed *Overland Steel, Inc. v. Director of Revenue*, 647 SW2d 535 (Mo. banc 1983) by ruling that a dual operator's purchases of inventory materials from Missouri suppliers for delivery in Missouri but subsequently removed for use in out-of-state construction jobs are subject to Missouri sales tax. This is true even though the out-of-state construction jobs may be exempt from sales tax in that out-of-state jurisdiction.

Builders Glass & Products Co. v. Director of Revenue, Case No. RS-85-0453 (A.H.C. 5/13/87). The assessments at issue dealt with transactions between Builders Glass & Products and various sales tax exempt religious and charitable organizations. The Administrative Hearing Commission found that the petitioner as a contractor should have paid sales tax on its purchases of supplies and materials used in completing its contracts. Therefore, the Department of Revenue did properly impose tax upon the purchase by petitioner of materials used and consumed by it as a contractor and the tax was properly collectable directly from the taxpayer who had purchased the materials under an improper claim of exemption.

Becker Electric Company, Inc. v. Director of Revenue, 749 SW2d 403 (Mo. banc 1988). A purchaser was determined to be the person who acquires title to, or ownership of, tangible personal property, or to whom is tendered services, in exchange for a valuable consideration. Becker was not the purchaser here because the materials were billed to the Housing Authority and the consideration was paid by the Housing Authority. If the materials are billed to the exempt organization and paid for from funds of the exempt organization, then the purchase is exempt if the materials are used in furtherance of the exempt purpose of the organization.

12 CSR 10-3.030 Construction Aggregate (Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 18 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-11 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

In **Marsh v. Spradling**, 537 SW2d 402 (Mo. banc 1976), where the installation of the cabinets was an integral part of the contract for sale, the cabinets installed by the contractor became part of the real estate under the doctrine of fixtures. The time of transfer of title was upon transfer of the real estate and no transfer of tangible personal property subject to the sales tax law occurred.

12 CSR 10-3.031 Dual Operators (Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 15, 1985, effective

March 24, 1986. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

12 CSR 10-3.032 Fabrication or Processing of Tangible Personal Property (Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-12 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.034 Modular or Sectional Homes (Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 91 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-13 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

State ex rel. Otis Elevator Co. v. Smith, 212 SW2d 580 (Mo. banc 1948). Otis Elevator Company was in the business of designing, constructing, installing and repairing elevators in buildings. Respondent claimed there was no sales tax due to petitioner Smith because the materials used to construct new elevators or to modify existing elevators lost their character or status as tangible personal property and became a part of the real property coincidentally with their delivery and attachment to the building. Respondent kept a title retention clause in his contract with the building contractor allowing him to retain title to the elevator until he was paid in full and if not, to remove the elevator. Judge Ellison held this clause prevented the tangible personal property from being joined with the realty. Absent this contractual clause, the court would have reached a different conclusion.

Where the contract for installation of new elevators, and reconstruction or major repairs to existing elevators whereby elevator company retains title to materials until paid, the elevator company is liable for sales tax. Had the contract not contained the title retentions clause, the elevator company would not be liable for sales tax.

Where an elevator company does repair work on existing elevators and supplies small parts which become part of the elevator, and

does not retain title to the parts, the company is not subject to sales tax. The parts become part of the realty (see **Air Comfort Service, Inc. v. Director of Revenue**, Case No. RS-83-1982 (A.H.C. 4/25/84) and **Marsh v. Spradling**, 402 SW2d 537 (Mo. banc 1976)).

Marsh v. Spradling, 537 SW2d 402 (Mo. banc 1976). Appellant cabinet maker constructed wooden kitchen cabinets at his own shop and installed them in homes under construction. The Department of Revenue sought to collect sales tax on the sales of the cabinets as tangible personal property. Since installation of the cabinets was an integral part of the contract for sale, the cabinets became part of the real estate under the doctrine of fixtures. The time of transfer of title was upon transfer of the real estate and no transfer of tangible personal property subject to the sales tax law occurred.

12 CSR 10-3.036 Sales Made by Employers to Employees

PURPOSE: This rule interprets the sales tax law as it applies to sales made by employers to employees and interprets and applies section 144.020, RSMo.

(1) Where an employer provides meals to his/her employees in exchange for cash, services or other valuable consideration, the employer is subject to sales tax on the total amount of cash or other consideration received.

(2) An employer who provides free meals to his/her employees should not purchase the foodstuffs under a resale exemption and should remit sales tax on the cost of the items which become an ingredient or component part of the free meals.

(3) For special circumstances in which employee meals would not be taxed, see *State ex. rel. Denny's, Inc. vs. Goldberg*, 578 SW2d 925 (Mo. banc 1979).

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 43 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-14 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

State ex rel Denny's, Inc. v. Goldberg, 578 SW2d 925 (Mo. banc 1979). Appellant restaurant franchise provided free meals for its employees on a per-hour-worked basis. The cost of the free meals was included as part of the restaurant's total food cost, and that total food cost was used to set the menu prices, on which retail sales tax was charged. The Department of Revenue sought to collect sales tax on the employee's free meals, using the FICA tax valuation of the meals as a fair value for state tax purposes. Since, under the cost scheme employed by the appellant, such a burden would constitute a double sales tax and there is no evidence that the legislature intended such a result, the Department of Revenue may not collect sales tax on the free meals.

12 CSR 10-3.038 Promotional Gifts and Premiums

PURPOSE: This rule interprets the sales tax law as it applies to promotional gifts and premiums, and interprets and applies sections 144.010, 144.020 and 144.021, RSMo.

(1) A seller who uses merchandise for advertising or promotional purposes by giving away the merchandise should not purchase the property under a resale exemption and should pay sales tax on the price paid for the merchandise at the time required.

(2) Sellers of tangible personal property to persons who purchase the tangible personal property for the purpose of giving it away as prizes, premiums, gifts or donations or by any other means are subject to the sales tax on the gross receipts from all these sales.

(3) Example 1: An appliance store holds a skill contest, the prize being a new five hundred dollar (\$500) retail value color television. The color television was purchased under a resale exemption certificate for two hundred fifty dollars (\$250). The appliance store should pay sales tax on the two hundred fifty dollars (\$250), the actual cost of the color television.

(4) Example 2: The State Bank holds a promotion to increase savings account additions and new accounts. The promotion consists of giving away clock radios and hair dryers for a certain increase of an existing account or the opening of a new account. The sellers of the clock radios and hair dryers are subject to the sales tax on the sales to the State Bank.

(5) Example 3: A bank purchases balloons and candy to be dispensed to children on the bank premises. The bank must pay sales tax on the cost of the items it buys.

(6) Example 4: John conducts a dart throwing booth at carnivals and other amusement events and he gives out prizes to contestants who score a stated number of points. John must pay sales tax on the cost of the prizes he buys.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 010-15 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

Mid-America Enterprises, Inc., d/b/a Worlds of Fun v. Director of Revenue, Case No. RS-84-0022 (A.H.C. 12/31/86). Petitioner argued that collection of sales and use tax on its purchases of prizes constituted double or even triple taxation because it was currently collecting and remitting sales tax on its gate admissions and was also collecting sales tax on receipts received from customers playing a particular game. In response to this argument, the commission held that the charge and amount paid for admission and receipts from the individual games were separate and distinct incidents of taxation under 144.020.1(2), RSMo and were taxable as fees paid to or in places of amusement, entertainment of recreation. Petitioner's purchases of prizes for the purpose of inducing or enticing prospective participants to play its games was a third incident of taxation as a retail sale of tangible personal property under 144.020.1(1), RSMo because petitioner was purchasing the stuffed animals and novelty items for its use and consumption in the course of operating its amusement park.

12 CSR 10-3.040 Premiums and Gifts
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 24 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-16 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 6, 1980, effective Dec. 11, 1980.

12 CSR 10-3.042 State or Federal Concessionaires
(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-17 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

12 CSR 10-3.044 Labor or Services Rendered
(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 17 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-18 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

In Kurtz Concrete, Inc. v. Spradling, 560 SW2d 858 (Mo. banc 1978), the court held while title ordinarily will not pass until property is delivered to buyer or reaches the agreed place, but title will pass notwithstanding that seller is to make delivery if such is the intention of the parties, the intention of the parties to control.

Signs by Sherri v. Director of Revenue, Case No. RS-84-2142 (A.H.C. 3/5/87). In this sales tax case, the taxpayer was a sign painter, and argued that it provided a non-taxable service. The Administrative Hearing Commission found that the taxpayer was selling tangible personal property and was therefore subject to sales tax. In making this decision, the Administrative Hearing Commission utilized the true object test. This test examines the real object sought by the buyer, that is, whether it was the buyer's object to obtain an act personally done by an individual as an economic service involving either intellectual or manual effort of an individual, or if it was the buyer's object to obtain only the salable end product of some individual skill. Here, the Administrative Hearing Commission determined that the taxpayer's customers sought to obtain the finished end product, that is, signs, and therefore the transactions were subject to sales tax.

Capital Automated Ticket Services, Inc. v. Director of Revenue, Case No. RS-84-1813 and RS-85-1778 (A.H.C. 9/12/88). The issue in this case considered whether sales tax could be imposed on service charges levied by the petitioner as a fee on the purchase of tickets to various events. The Administrative

Hearing Commission determined that the service charges were a nontaxable service and not a fee charged for admission to a place of amusement.

12 CSR 10-3.046 Caterers and Mandatory Gratuities

PURPOSE: This rule interprets the sales tax law as it applies to caterers and mandatory gratuities, and interprets and applies section 144.010, RSMo.

(1) Caterers are retail merchants or sellers purchasing raw materials from various suppliers from which finished food, meals and drink are prepared and sold at retail. Caterers are subject to sales tax on their gross receipts including labor, services or so-called mandatory gratuities which are a part of these sales.

(2) Mandatory gratuities are considered to be a necessary part of the sale when charged by restaurants or others and are subject to the sales tax even when the charges are separately stated to the customer.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-19 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

Penn Corp. v. Director of Revenue, Cole County Circuit Court No. 2994 (March 1980). The court held the taxpayer must include mandatory gratuities in the gross receipts for purposes of payment of sales tax.

12 CSR 10-3.048 Clubs and Other Organizations Operating Places of Amusement

PURPOSE: This rule interprets the sales tax law as it applies to clubs and other organizations operating places of amusement and clarifies the circumstances under which fees and charges paid to clubs are subject to sales tax.

(1) Definitions.

(A) Club is an organization or group of people associated for a common purpose or for mutual advantage, relating to a place of amusement, entertainment or recreation.

(B) Business is an activity engaged in by any person or caused to be engaged in by him/her with the object of gain, benefit or

advantage, either direct or indirect, except as otherwise provided in this rule (see section 144.010.1(2), RSMo).

(C) Not-for-profit organization is an organization, including a not-for-profit corporation, no part of the income or property of which is distributable to its members, directors or officers; provided, however, that payment of reasonable compensation for services rendered and the making of distributions not representing pecuniary profits or gains upon dissolution or final liquidation are not deemed a distribution of income or property.

(D) For-profit organization is any organization which does not qualify as a not-for-profit organization.

(E) Place of amusement is any location in which amusement activities comprise more than a *de minimus* portion of the business activities of the location and includes, but is not limited to, clubs (see *St. Louis Country Club v. Administrative Hearing Commission*, 657 SW2d 614 (Mo. banc 1983), *Spudich v. Director of Revenue*, 745 SW2d 677 (Mo. banc 1988) and *Soccer World West, Inc. v. Director of Revenue*, A.H.C. No. 90-001797RS (1989)).

(F) Amusement is a pleasurable diversion or entertainment (see *Spudich v. Director of Revenue*, 745 SW2d 677 (Mo. banc 1988)).

(G) Homeowners' association is a not-for-profit organization whose membership is limited to residential property owners or tenants in a specified development, subdivision or area, which provides services for the betterment of the development, subdivision or area or for the benefit of the property owners or their tenants.

(2) All fees or charges, including fees or charges paid for admission and seating accommodations, paid to or in any place of amusement, entertainment, recreation, games or athletic events, are subject to sales tax when operated by for-profit and not-for-profit organizations as business activities.

(3) Amounts paid in or to a not-for-profit organization by members for the sole purpose of obtaining initial membership rights to participate in the ownership, operation and control of the club are not subject to tax. All amounts periodically paid in or to a not-for-profit organization by members for any purpose other than obtaining initial membership rights are a business activity and are subject to tax. All operating assessments or operating fees are taxable. Any other assessment or fee charged by an existing club solely to build or create a new place of amusement or a real-property addition to a place of amusement is

not a fee in or to a place of amusement and is not subject to sales tax.

(4) Amounts paid by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities are not subject to sales tax (see section 144.030.2(19), RSMo).

(5) Amounts paid by or to not-for-profit civic, social, service or fraternal organizations solely in their civic or charitable functions and activities are not subject to sales tax. All other fees or charges paid into a place of amusement operated by a not-for-profit civic, social, service or fraternal organization are subject to sales tax. Amounts paid to national or state parent organizations of not-for-profit civic, social, service or fraternal organizations are not subject to sales tax. Other amounts paid to these local organizations are subject to sales tax if the amount authorizes admission, seating accommodations or access to a place of amusement (see section 144.030.2(20), RSMo).

(6) Amounts paid in or to a place of amusement by members or by members on behalf of their guests are subject to sales tax unless otherwise exempt.

(A) Example: A club charges a member a specific amount each time a facility such as a driving range is used or for an activity such as a dance. Unless otherwise exempt, this amount is subject to sales tax (see section 144.020.1(2), RSMo, *St. Louis Country Club v. Administrative Hearing Commission*, 657 SW2d 614 (Mo. banc 1983) and *Soccer World West, Inc. v. Director of Revenue*, A.H.C. No. 90-001797RS (1990)).

(7) If a club regularly serves food and beverages to the public, all sales are subject to sales tax on the amount of gross receipts. If a club does not regularly serve food and beverages to the public, other than its members and their guests, and the club acts as a cooperative association for the benefit of its members, the club has the option of either collecting and remitting sales tax on its sales to members and guests or paying sales tax on the club's purchases of food and beverages (see section 144.020.1(6), RSMo).

(8) Involuntary or mandatory gratuities or service charges on food or beverage sales at clubs retain the same character as the underlying sale of food and beverage.

(A) Example: A service charge of twenty percent (20%) is added to all food and beverage sales of a club. If the sales of food or beverage are not subject to sales tax, then the

service charge is likewise not subject to sales tax. If the sale of food or beverage is subject to sales tax, then the service charge is subject to sales tax (see section 144.020.1(6), RSMo).

(9) Amounts paid for lessons, whether within or not within a place of amusement, are not subject to sales tax. Examples of those lessons or other nontaxable activities include dance, karate, gymnastic, piano and singing lessons, haircuts, shoe polishing and child care. Notwithstanding this section, all amounts periodically paid in or to an organization as dues or noninstructional participation fees are subject to tax pursuant to section (3) of this rule.

(10) Amounts paid within a place of amusement for any use of golf carts, golf cart sheds, lockers, massage machines, tanning booths or other equipment or property are subject to sales tax.

(11) If a place of amusement is used by an outside organization which pays all fees within the place of amusement, the treatment of these fees is based on the tax status of the outside organization.

(A) Example: Organization A holds a golf tournament to raise funds. Organization A is a charitable organization and has received a sales tax exemption letter from the Department of Revenue for both its sales and purchases. The tournament fee of fifty dollars (\$50) is paid by the organization and includes the golf fees, cart rental and a meal. No sales tax should be collected on the charge made by the club for the use of its facilities and equipment.

(B) In the example in subsection (11)(A), if the club charges the individual participants and not the charitable organization any fee, sales tax should be collected on that fee.

(12) Amounts paid in or to homeowners' associations specifically for admission to or use of amusement, entertainment or recreational facilities or events are subject to sales tax. Amounts paid in or to homeowners' associations for nonentertainment or nonrecreational services, such as subdivision security, street lights, snow removal, insurance, maintenance, utilities or trash removal are not subject to sales tax. If a homeowners' association charges each owner or tenant a set fee which covers operation and maintenance of all recreational and nonrecreational services and facilities, regardless if the owner or tenant makes use of the recreational facilities, the entire amount is not taxable.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously published as rule no. 46 in Rules and Regulations relating to the Missouri Sales Tax Act, 1949. Republished as rule no. 44 in the Missouri Sales Tax Act and Compensating Use Tax Law with Rules and Regulations, 1963. S.T. regulation 010-20 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Feb. 4, 1986, effective June 28, 1986. Emergency amendment filed Nov. 15, 1990, effective Nov. 25, 1990, expired March 24, 1991. Emergency rescission and rule filed Jan. 3, 1991, effective Jan. 13, 1991, expired May 13, 1991. Emergency rescission and rule filed May 3, 1991, effective May 13, 1991, expired Sept. 9, 1991. Rescinded and readopted: Filed Jan. 3, 1991, effective June 10, 1991.*

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

12 CSR 10-3.050 Drinks and Beverages

PURPOSE: This rule interprets the sales tax law as it applies to the sale of drinks and beverages, and interprets and applies sections 144.010 and 144.080, RSMo.

(1) Sales tax applies to the total selling price of drinks and beverages, whether intoxicating or otherwise, unless the business or person selling the drink has a prominently displayed sign separately stating the price of the drink as well as the amount of the applicable sales tax or has an express written notice stating the price of the drink as well as the amount of the applicable sales tax on the menu, ticket, bill or cash register receipt which is supplied to each and every patron.

(2) Example 1: A bar sells mixed drinks for two dollars (\$2). There are neither signs in the establishment nor any other written notification supplied to each patron that separately states the price of the drink and the applicable sales tax. The business is subject to sales tax on the two dollars (\$2).

(3) Example 2: A bar sells mixed drinks for one dollar and seventy-five cents (\$1.75) plus twenty-five cents (25¢) sales tax for a total price of two dollars (\$2). The bar has a prominently displayed sign that reads: Mixed drinks one dollar and seventy-five cents (\$1.75). The business is subject to sales tax on the one dollar and seventy-five cents (\$1.75).

(4) Example 3: A bar sells mixed drinks for two dollars (\$2). The bar supplies the patron, simultaneously with the drink, a cash register receipt that reads: Mixed drinks one dollar and seventy-five cents (\$1.75) plus twenty-five cents (25¢) sales tax, total two dollars (\$2). The business is subject to sales tax on the one dollar and seventy-five cents (\$1.75).

(5) Example 4: A restaurant sells mixed drinks for one dollar and seventy-five cents (\$1.75) plus twenty-five cents (25¢) sales tax for a total price of two dollars (\$2). The restaurant provides to each patron a menu which states: Mixed drinks one dollar and seventy-five cents (\$1.75). The restaurant is subject to sales tax on the one dollar and seventy-five cents (\$1.75).

(6) Example 5: A restaurant has an attached lounge that sells mixed drinks for two dollars (\$2). While the patrons sitting in the restaurant are supplied with a menu which complies with section (5), the lounge patrons are not supplied with any written notification, such as a sign or otherwise, therefore, the restaurant lounge is subject to sales tax on the two dollars (\$2).

AUTHORITY: sections 144.270, RSMo 1994. This rule was previously filed as rule no. 66 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-21 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed April 11, 1984, effective Oct. 11, 1984.*

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

12 CSR 10-3.052 Sale of Ice

PURPOSE: This rule interprets the sales tax law as it applies to the sale of ice and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Persons selling ice to other sellers of ice or to sellers of soft drinks for use as a component part of the drink are sales for resale purposes and are not subject to the sales tax when a resale exemption certificate is issued.

(2) Persons selling ice to manufacturers, carriers or any other consumer for the purpose of cooling or keeping perishable items of property or for other uses are subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 45 Jan. 22, 1973, effective Feb. 1, 1973. S.T.*

regulation 010-22 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.

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

P.F.D. Supply Corporation v. Director of Revenue, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The commissioner, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in “manufacturing, processing, compounding, mining, producing or fabricating” found that the production of food by a restaurant constituted processing.

Relying on its previous decision in **Blueside Co. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84) the commission found that the petitioner’s sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to **Blueside**, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in **Overland Steel, Inc. v. Director of Revenue**, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the **Overland Steel** case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to

Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2), in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller’s good faith exempted it from liability.

Finally, the commission held that non-reusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on such items.

12 CSR 10-3.054 Warehousemen (Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 31 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-23 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

Floyd Charcoal Co. v. Director of Revenue, 599 SW2d 173 (Mo. banc 1980). Appellant charcoal company purchased pallets upon which charcoal packages were loaded for sale to its customers and claimed an exemption from the payment of sales tax on its initial purchase of the pallets as being purchases for resale to its customers. The assessment of sales tax was upheld since the charcoal company maintained the practice of crediting the customer’s next purchase for each pallet returned to it.

12 CSR 10-3.056 Retreading Tires (Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 42 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-24 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Oct. 15, 1985, effective Jan. 26, 1986. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

State ex rel. AMF Inc. v. Spradling, 518 SW2d 58 (Mo. banc 1974). AMF claimed exemptions from sales tax on rental received under leases of the machines in that they were used in manufacturing pursuant to section

144.020.1(8), RSMo (1969). The claimed exemption was denied, as the machinery and the retreading process did not manufacture a raw product from raw materials as contemplated by the statute, but rather served to repair an already existing tire.

12 CSR 10-3.058 Automotive Refinishers and Painters (Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 40 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-25 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.060 Memorial Stones (Rescinded: September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 83 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-26 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

In Kurtz Concrete, Inc. v. Spradling, 560 SW2d 858 (Mo. banc 1978), the court held while title ordinarily will not pass until property is delivered to buyer or reaches agreed place but title will pass notwithstanding that seller is to make delivery if such is the intention of the parties, the intention of the parties to control.

12 CSR 10-3.062 Maintenance or Service Contracts Without Parts (Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 92 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-27 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.064 Maintenance or Service Contracts With Parts (Rescinded April 30, 2001)



AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 92 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-28 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.066 Delivery, Freight and Transportation Charges—Sales Tax
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 010-29 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded and readopted: Filed Oct. 1, 1993, effective May 9, 1994. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

Kurtz Concrete, Inc. v. James R. Spradling, 560 SW2d 858 (Mo. banc 1978). The court held while title ordinarily will not pass until property is delivered to buyer or reaches agreed place but title will pass notwithstanding that seller is to make delivery if such is the intention of the parties, the intention of the parties to control.

12 CSR 10-3.068 Freight and Transportation Charges
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 15 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-30 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.070 Service-Oriented Industries
(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 78 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-31 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed Oct. 15, 1985, effective Jan. 26, 1986. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

K & A Litho Process, Inc. v. Department of Revenue, 653 SW2d 195 (Mo. banc 1983). The issue in this case was whether the decision of the Administrative Hearing Commission upholding sales tax on lithographic work performed by the appellant was correct. The court, following its recent decision in *James v. TRES Computer Systems, Inc.*, 642 SW2d 347 (Mo. banc 1982), found that the lithographic process was the nontaxable sale of a technical professional service and that the transfer of ownership to tangible personal property was only incidental. *K & A Litho Process* received a color transparency from an outside source such as a printer, advertising agency or publishing house and then created a film separation and a color key that the printer, advertising agency or publishing house could use to print the transparency on paper for distribution. Because the color separation and the color key were merely the means of conveying a nontaxable technical service from *K & A Litho* to its customers, the gross amount paid to *K & A Litho* was not taxable.

12 CSR 10-3.072 Repair Industries
(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 78 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-32 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.074 Garages, Body and Automotive Shops and Service Stations
(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule nos. 39 and 41 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-33 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.076 Used Car Dealers
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-33A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.078 Laundries and Dry Cleaners
(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 76 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-34 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

Foto's Copies, Inc. v. Director of Revenue, Case Nos. RS-85-0068, RS-85-0069 and RS-85-0109 (A.H.C. 6/8/87). Gross receipts from coin-operated copiers are subject to Missouri sales tax. Finding that the true object of obtaining a copy is to obtain a tangible reproduction of the original and that the information is not purchased because the purchaser already has the information on the original, the Administrative Hearing Commission held the transactions to be sales of tangible personal property, subject to Missouri sales tax.

Tri-State Service Co. v. Director of Revenue, Case No. RI-85-1602 (A.H.C. 7/9/87). The Administrative Hearing Commission ruled that *Tri-State* was liable for compensating use tax on those linens and uniforms that are purchased from out-of-state suppliers, delivered to Missouri, placed in inventory in Missouri and then rented to out-of-state users. At the time of placement into inventory, *Tri-State* did not know which customer would use the items and *Tri-State* commingled the linens and uniforms with the general mass of property of this state when they were placed in inventory. The linens and uniforms were therefore sold to *Tri-State* for storage and use in Missouri.

12 CSR 10-3.080 Ceramic Shops
(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-35 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.082 Furniture Repairers and Upholsterers
(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 79 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-36 was last filed Dec. 5, 1975, effective Dec. 15, 1975. Refiled March

30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.084 Fur and Garment Repairers
(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 80 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-37 was last filed Dec. 5, 1975, effective Dec. 15, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.086 Bookbinders, Papercutters, Etc.
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 73 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-37A was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

Foto's Copies, Inc. v. Director of Revenue, Case Nos. RS-85-0068, RS-85-0069 and RS-85-0109 (A.H.C. 6/8/87). Gross receipts from coin-operated copiers are subject to Missouri sales tax. Finding that the true object of obtaining a copy is to obtain a tangible reproduction of the original and that the information is not purchased because the purchaser already has the information on the original, the Administrative Hearing Commission held the transactions to be sales of tangible personal property, subject to Missouri sales tax.

12 CSR 10-3.088 Photographers, Photofinishers and Photoengravers

PURPOSE: This rule interprets the sales tax law as it applies to photographers, photofinishers, photoengravers and services performed by artists, and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Sales of photoengravings, photostats, blueprints, electrotypes, stereotypes, wood engravings and the like, to customers for use or consumption, whether on special order, contract or otherwise, are subject to sales tax. Likewise, sales to architects, abstract and title companies are also retail sales for use and

consumption and therefore are subject to sales tax. Sales of picture frames, films, cameras and other similar items are sales at retail and are subject to sales tax.

(2) Photographers, photofinishers, photoengravers, blueprinters and other persons purchasing tangible personal property such as paper, which becomes a component or an ingredient part of a finished product which will ultimately be sold at retail, should purchase their supplies under a resale exemption certificate. However, supplies, equipment, dry plates, film, chemicals and other materials purchased for their own use or consumption are subject to sales tax.

(3) The sale of photographic prints, when the sale price includes the sale of processing, service or labor as well as tangible personal property, is subject to sales tax on the entire sales price. Sales of slides, including services, are subject to sales tax on the gross receipts, where the customer receives tangible personal property incidental to the processing of such slides. The sale of negative development services only, where no new prints, slides or other tangible personal property are received, is not subject to the sales tax (see *The Flash Cube, Inc. v. Director of Revenue, A.H.C. No. RS-80-0083*).

AUTHORITY: section 144.270, RSMo 1994. * This rule was previously filed as rule no. 70 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-37B was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

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

In The Flash Cube, Inc. v. Director of Revenue, Case No. RS-80-0083, (A.H.C. 3/16/83), the issue was whether the sale of photographic prints, slides and negatives was a taxable sale of tangible personal property or the sale of a nontaxable service. The Administrative Hearing Commission held that sales tax was due on prints and slides because in preparing these items for the end user the taxpayer added photographic paper and cardboard frames to the finished product. Processing of negatives was held to be nontaxable service since the taxpayer did not add any of his own tangible personal property to the end user's product.

P.F.D. Supply Corporation v. Director of Revenue, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the im-

position of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The commissioner, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.

Relying on its previous decision in *Blueside Co. v. Director of Revenue, Case No. RS-82-4625 (A.H.C. 10/5/84)* the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to *Blueside*, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in *Overland Steel, Inc. v. Director of Revenue, 647 SW2d 535 (Mo. banc 1983)* held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the *Overland Steel* case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2), in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.

Finally, the commission held that non-reusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on such items.

Foto's Copies, Inc. v. Director of Revenue, Case Nos. RS-85-0068, RS-85-0069 and RS-85-0109 (A.H.C. 6/8/87). Gross receipts from coin-operated copiers are subject to Missouri sales tax. Finding that the true object of obtaining a copy is to obtain a tangible reproduction of the original and that the information is not purchased because the purchaser already has the information on the original, the Administrative Hearing Commission held the transactions to be sales of tangible personal property, subject to Missouri sales tax.

Douglas J. Rousseau, d/b/a Rousseau Photography v. Director of Revenue, Case No. RS-87-0011 (A.H.C. 10/8/87). The Administrative Hearing Commission found that the photographer was making sales of class pictures directly to the students and the sales were subject to sales tax. The agreements with the schools were for the exclusive right to take the pictures at the schools and were not agreements to make sales to the schools or to act as the schools' agent. Separate contracts were entered into by the photographer and the students for the sale of pictures. The schools had no input as to which students purchased pictures or what picture packages were purchased. In addition, the payment for the pictures were made by the students and did not come from schools' funds.

Snap Shot Photo v. Director of Revenue, Case No. RS-87-1056 (A.H.C. 8/29/88). The Administrative Hearing Commission found that photofinishing is manufacturing and that contrary to the Department of Revenue's position, photofinishing is an integrated process and therefore, both stages of the taxpayer's operation were manufacturing under 144.030.2(2), (4) and (5), RSMo.

The Administrative Hearing Commission also found that all chemicals used in the photofinishing process as part of a closed vat system, and not washed away during the process, were exempt from taxation because "all such chemicals do become ingredients and component parts of all the products over time."

12 CSR 10-3.090 Watch and Jewelry Repairers

(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 81 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-38 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.092 Painters

(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 53 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-39 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.094 Interior or Exterior Decorators

(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 53 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-40 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.096 Janitorial Services

(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-41 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.098 Drugs and Medicines

(Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 69 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-42 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

W.H. Hopmeier, Inc. v. Director of Revenue, Case No. RS-79-0295 (A.H.C. 7/19/82). The Department of Revenue is not required to give taxpayers notice of change in law and is not estopped from collection of tax by an unauthorized pronouncement of a department agent that assessments would not be made. Assessment for first five days in May 1979 are void because effective date of the statute was May 5, 1979.

12 CSR 10-3.100 Barber and Beauty Shops

(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 75 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-43 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.102 Sheet Metal, Iron and Cabinet Works

(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 52 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-44 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

State ex rel. Otis Elevator Co. v. Smith, 212 SW2d 580 (Mo. banc 1948). Otis Elevator Company was in the business of designing, constructing, installing and repairing elevators in buildings. Respondent claimed there was no sales tax due to petitioner Smith because the materials used to construct new elevators or to modify existing elevators lost their character or status as tangible personal property and became a part of the real property coincidentally with their delivery and attachment to the building. Respondent kept a title retention clause in his contract with the building contractor allowing him to retain title to the elevator until he was paid in full and if not, to remove the elevator. Judge Ellison held this clause prevented the tangible personal property from being joined with the realty. Absent this contractual clause, the court would have reached a different conclusion.

Where the contract for installation of new elevators, and reconstruction or major repairs to existing elevators whereby elevator

company retains title to materials until paid, the elevator company is liable for sales tax. Had the contract not contained the title retentions clause the elevator company would not be liable for sales tax.

Where elevator company does repair work on existing elevators and supplies small parts which become part of the elevator, and does not retain title to the parts, the company is not subject to sales tax. The parts become part of the realty (see *Air Comfort Service, Inc. v. Director of Revenue*, Case No. RS-83-1982 (A.H.C. 4/25/84) and *Marsh v. Spradling*, 402 SW2d 537 (Mo. banc 1976)).

Roger W. Marsh, d/b/a Bestmade Wood Products v. Spradling, 537 SW2d 402 (Mo. banc 1976). Marsh made kitchen cabinets to order and installed them in new homes. Marsh paid sales tax on the materials and lumber used to make the cabinets. The court held that the cabinets became a part of the realty upon attachment and were not subject to any further sales tax. The case also states that pre-made cabinets from a shop, sold to a purchaser who takes them home and installs them are subject to sales tax.

12 CSR 10-3.104 Vending Machines Defined

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 010-45 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.106 Vending Machines on Premises of Owner

(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 67 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-46 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

Canteen Corporation v. Goldberg, 592 SW2d 754 (Mo. banc 1980). This company derived income from selling candy bars through coin-operated vending machines. Appellant contended that a candy bar which cost 25¢ should be taxed on that amount. Respondent stated the candy bar really cost 24¢ and the extra penny was sales tax. The court agreed with Canteen Corporation.

L & R Distributing, Inc. v. Department of Revenue, 529 SW2d 375 (Mo. banc 1975). L & R owned several pinball machines and other coin-operated devices. Appellant sought to subject the proceeds from these devices to taxation based on section 144.010.1(2), RSMo (1978). The court held that the mere placement of a pinball or other coin-operated amusement device in a public location was not sufficient to turn the location into a place of amusement for taxing purposes.

Foto's Copies, Inc. v. Director of Revenue, Case Nos. RS-85-0068, RS-85-0069 and RS-85-0109 (A.H.C. 6/8/87). Gross receipts from coin-operated copiers are subject to Missouri sales tax.

12 CSR 10-3.108 Vending Machines on Premises Other Than Owner

(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 67 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-47 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

Canteen Corporation v. Goldberg, 592 SW2d 754 (Mo. banc 1980). This company derived income from selling candy bars through coin-operated vending machines. Appellant contended that a candy bar which cost 25¢ should be taxed on that amount. Respondent stated the candy bar really cost 24¢ and the extra penny was sales tax. The court agreed with Canteen Corporation.

L & R Distributing, Inc. v. Department of Revenue, 529 SW2d 375 (Mo. banc 1975). L & R owned several pinball machines and other coin-operated devices. Appellant sought to subject the proceeds from these devices to taxation based on section 144.010.1(2), RSMo 1978. The court held that the mere placement of a pinball or other coin-operated amusement device in a public location was not sufficient to turn the location into a place of amusement for taxing purposes.

L & R Distributing Co., Inc. v. Department of Revenue, 648 SW2d 91 (Mo. banc 1983). The court held that the proceeds of coin-operated amusement devices located in places of amusement are taxable.

12 CSR 10-3.110 Publishers of Newspapers

(Rescinded June 11, 1990)

AUTHORITY: section 144.270, RSMo 1986. Previously filed as rule no 72 Jan. 22, 1973, effective Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-48 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Feb. 27, 1990, effective June 11, 1990.

Daily Record Co., d/b/a Mid-America Printing Company v. Ray James, 629 SW2d 348 (Mo. banc 1982). This opinion by Judge Seiler defines the term "newspaper." It cites without comment Department of Revenue's definition of "newspaper" which is contained in 12 CSR 10-3.112. It held that an advertising supplement which is printed solely to be inserted into and distributed by a newspaper is an integral part of that newspaper and is entitled to same exemption from sales tax as is the remainder of newspaper.

James v. Mars Enders, Inc., 629 SW2d 331 (Mo. banc 1982). Printing costs of advertising supplements, which were printed to be distributed as part of newspaper and which were, in fact, distributed as part of a newspaper, were not sales of tangible personal property or services and were thus not subject to sales tax; newsprint used to print the supplements was "newsprint used in newspaper" and was exempt from taxation.

Blake D. Thomas, d/b/a The Thomas Report v. Director of Revenue, Case Nos. RS-84-2144 and RZ-86-1162 (A.H.C. 5/11/87). 12 CSR 10-3.112(1) provides the minimum requirements for a publication to qualify as an exempt newspaper. The test is whether the contents of the publication are of the nature required by the regulation. Petitioner's publication did not disseminate news to the public but was instead intended to serve as a vehicle for petitioner's investment advice and commentary. It did not qualify, therefore, for the newspaper exemption.

12 CSR 10-3.112 Newspaper Defined

PURPOSE: This rule defines the term newspaper for purposes of the sales tax law and interprets and applies sections 144.010, 144.021 and 144.030, RSMo.

(1) In order to constitute a newspaper, the publication must contain at least the following elements: it must be published at stated short intervals, usually daily or weekly; it

must not, when its successive issues are put together, constitute a book; it must be intended for dissemination of news to the general public; it must contain matters of general interest and reports of current events; and it must generally be in sheet form.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 010-49 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

Daily Record Co., d/b/a Mid-America Printing Company v. Ray James, 629 SW2d 348 (Mo. banc 1982). This opinion by Judge Seiler defines the term “newspaper”. It cites without comment Department of Revenue’s definition of “newspaper” which is contained in 12 CSR 10-3.112. It held that an advertising supplement which is printed solely to be inserted into and distributed by a newspaper is an integral part of that newspaper and is entitled to the same exemption from sales tax as is the remainder of newspaper.

James v. Mars Enders, Inc., 629 SW2d 331 (Mo. banc 1982). Printing costs of advertising supplements, which were printed to be distributed as part of a newspaper and which were, in fact, distributed as part of newspaper, were not sales of tangible personal property or services and were thus not subject to sales tax; newsprint used to print the supplements was “newsprint used in newspaper” and was exempt from taxation.

Blake D. Thomas, d/b/a The Thomas Report v. Director of Revenue, Case Nos. RS-84-2144 and RZ-86-1162 (A.H.C. 5/11/87). 12 CSR 10-3.112(1) provides the minimum requirements for a publication to qualify as an exempt newspaper. The test is whether the contents of the publication are of the nature required by the regulation. Petitioner’s publication did not disseminate news to the public but was instead intended to serve as a vehicle for petitioner’s investment advice and commentary. It did not qualify, therefore, for the newspaper exemption.

12 CSR 10-3.114 Periodicals, Magazines and Other Printed Matter
(Rescinded June 11, 1990)

AUTHORITY: section 144.270, RSMo 1986. Previously filed as rule No. 72 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-50 was last filed Dec. 31, 1975, effective Jan.

10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Jan. 28, 1983, effective May 12, 1983. Rescinded: Filed Feb. 27, 1990, effective June 11, 1990.

Daily Record Co., d/b/a Mid-America Printing Company v. Ray James, 629 SW2d 348 (Mo. banc 1982). This opinion by Judge Seiler defines the term “newspaper”. It cites without comment Department of Revenue’s definition of “newspaper” which is contained in 12 CSR 10-3.112. It held that an advertising supplement which is printed solely to be inserted into and distributed by a newspaper is an integral part of that newspaper and is entitled to the same exemption from sales tax as is the remainder of newspaper.

James v. Mars Enders, Inc., 629 SW2d 331 (Mo. banc 1982). Printing costs of advertising supplements, which were printed to be distributed as part of newspaper and which were, in fact, distributed as part of newspaper, were not sales of tangible personal property or services and were thus not subject to sales tax; newsprint used to print such supplements was “newsprint used in newspaper” and was exempt from taxation.

Dolgin’s Incorporated v. Director of Revenue, A.H.C. No. RS-79-0322 (1982). Dolgin’s advertised its products by using professionally printed advertising supplements in newspapers within this state. They also distributed the same advertising supplement direct to Missouri consumers by mail. These direct mail advertising supplements were held taxable under section 144.610.1, RSMo 1978 because Dolgin’s “used” them within this state. The interruption of transportation of supplements at distribution points in Missouri, prior to their being placed in the U.S. mail, constitutes a taxable moment. The newsprint exemption from sales tax does not apply since these supplements did not become “integral parts of newspapers.”

12 CSR 10-3.116 Service Station Ownership
(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 90 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-51 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

12 CSR 10-3.118 Leased Departments or Space

PURPOSE: This rule interprets the sales tax law as it applies to leased departments or space and interprets and applies sections 144.010 and 144.021.

(1) When a business leases certain of its departments or leases space to other persons selling tangible personal property or taxable services to consumers, each lessee shall make separate returns and remittances.

(2) Example: Mr. Big, who sells furniture, leases a portion of his store to Mr. Cap for the purpose of selling appliances. Both Mr. Big and Mr. Cap should file separate sales tax returns.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 21 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-52 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.120 Food Stamps and W.I.C. (Women, Infants and Children) Vouchers

PURPOSE: This rule interprets the sales tax law as it applies to food stamps and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Food stamp receipts derived from customers who pay for food products with federal food stamp coupons or W.I.C. (Women, Infants and Children) vouchers are not subject to the sales tax.

(2) Purchases made with food stamps or W.I.C. vouchers shall be treated by the department as an exemption certificate presented to the seller by the purchaser.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 010-53 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Emergency amendment filed Sept. 24, 1987, effective Oct. 4, 1987, expired Feb. 1, 1988. Amended: Filed Sept. 24, 1987, effective Jan. 29, 1988.

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

12 CSR 10-3.122 Consideration Other Than Money, Except for Trade-Ins (Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 16 Jan. 22, 1973, effective Feb. 1, 1973. S. T. regulation 010-54 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.124 Coins and Bullion

PURPOSE: This rule interprets the sales tax law as it applies to coins and bullion, and interprets and applies sections 144.010, 144.020 and 144.021, RSMo.

(1) When any coin or currency is exchanged in the open market, at the current exchange rate, that transaction is not subject to the sales tax. However, when coins or currency, although acceptable as legal tender, are purchased at rates not reflecting actual currency value, for numismatic collection purposes or where the precious metal content of the coins determines their value, the transaction is the sale of tangible personal property subject to the sales tax.

(2) Sales of bullion are subject to sales tax. Bullion sold within Missouri which is physically or constructively transferred in the state is subject to the sales tax. Sales of gold and silver commodity contracts are not subject to sales tax.

AUTHORITY: section 144.270, RSMo 1994. * S.T. regulation 010-55 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

Scotchman's Coin Shop, Inc. v. Administrative Hearing Commission, 654 SW2d 873 (Mo. banc 1983). The sole issue in this case was whether sales tax was applicable to the purchase price of silver coins, Krugerrands and silver bars. The taxpayer claimed that the property was money and thus intangible personal property not subject to sales tax under section 144.020, RSMo 1978. Also at issue was whether the imposition of sales tax interfered with the exclusive power of the federal government to regulate the value of U.S. and foreign coins and to regulate commerce with foreign nations.

The court found against the petitioner and for the department on the grounds that the coins and metal at issue constituted tangible personal property rather than intangible property or money. The court looked beyond legal fictions and academic jurisprudence to the essence of the transaction and found that money has value both as tangible and intangible personal property. In the case at hand the court believed that the sales had been made for the tangible value of the metal rather than for the intangible value of the items as a medium of exchange. The court found that the items in question were sold for their value as precious metal and were therefore personal property subject to sales tax. The court also found that because the department's regulation 12 CSR 10-3.124, which outlined the basis for taxing certain types of coin or currency, was in compliance with the intent of section 144.020.1, RSMo 1978 that it did not create an irrational, artificial classification.

Finally, the court found that because the tax in question was imposed on the value of the precious metal and not on the intangible values assigned the coins by the federal government that the sales tax in no way infringed upon the exclusive right of the federal government to regulate the value of money or coin or to determine the character of legal tender.

Martin Coin Co. of St. Louis v. Richard A. King, 665 SW2d 939 (Mo. banc 1984). The court held in *Scotchmen's Coin Shop v. Administrative Hearing Commission*, 654 SW2d 873 (Mo. banc 1983) that sales of coins for their value as precious metal constituted the sale of personal property subject to sales tax. Martin Coin attempted to distinguish its activities from those of Scotchman's by asserting that it was an agent between two principals and that it was not a vendor, but merely a broker. Martin Coin purchased the coins in question on its own line of credit, was liable to the vendor of the coins, bore the risk of nonpayment by its customers, deposited the proceeds from the sales in its own bank account and paid the supplier for coins ordered. In the court's opinion, Martin Coin was involved in both a) the purchase of coins from the supplier and b) the sale of coins to customers. The latter constituted a taxable event. Additionally, the court noted that while Martin Coin attempted to label itself an agent, rather than a vendor, there was no evidence in the record to indicate that the vendors of the coins had any control over Martin Coin; thus a key element of agency was lacking. The court refused on procedural grounds to hear the issue which Martin Coin raised in its brief concerning invasion of the federal

government's exclusive power to regulate foreign commerce.

12 CSR 10-3.126 Federal Manufacturer's Excise Tax

PURPOSE: This rule interprets the sales tax law as it applies to the federal manufacturer's excise tax.

(1) When tangible personal property is subject to the federal manufacturer's excise tax and the manufacturer passed the excise tax on to the seller or retailer, the total amount of money or other consideration received by the seller is subject to the sales tax except the amount of the federal manufacturer's excise tax separately stated on the invoice.

(2) When the seller is required by the federal law to collect a federal excise tax from the purchaser and remit the tax directly to the federal government, the seller is not required to include the excise tax collected in his/her gross receipts.

AUTHORITY: section 144.270, RSMo 1994. * This rule was previously filed as rule no. 84 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-56 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

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

12 CSR 10-3.128 Salvage Companies (Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-57 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.130 Assignments and Bankruptcies

PURPOSE: This rule interprets the sales tax law as it applies to assignments and bankruptcies, and interprets and applies sections 144.010, 144.083 and 144.090 in conjunction with Chapter 11 U.S.C.A., Bankruptcy Code.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the

entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) The trustee in bankruptcy, or the assignee in the case where an assignment has been made for and on behalf of creditors, should remit any outstanding taxes, interest charges or penalties before a general distribution of funds is made.

(2) When the courts appoint any person, whether trustee, assignee or receiver, to take over any business and operate or liquidate it, those persons are subject to sales tax. Every person should immediately notify the Department of Revenue when appointed by the court to take over or liquidate any business. These persons may continue to report sales taxes under the sales tax number assigned to the debtor.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 14 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-58 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.131 Change of State Sales Tax Rate

(Rescinded February 28, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Emergency amendment filed Sept. 29, 1989, effective Oct. 9, 1989, expired Feb. 5, 1990. Amended: Filed Sept. 29, 1989, effective Feb. 25, 1990. Rescinded: Filed Aug. 24, 2000, effective Feb. 28, 2001.

12 CSR 10-3.132 Purchaser Includes

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 010-59 was last filed Dec. 31,

1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.134 Purchaser's Responsibilities

PURPOSE: This rule interprets the sales tax law as it applies to a purchaser's responsibilities and interprets and applies sections 144.010 and 144.060, RSMo.

(1) When a person has delivered an exemption certificate and the person delivering the exemption certificate uses the tangible personal property in a manner other than that indicated on the exemption certificate, then the person delivering the exemption certificate is subject to the sales tax on the purchase price of the tangible personal property at the time it is converted to use.

(2) A seller is not subject to the sales tax when a sale is made in good faith reliance upon a signed exemption certificate. The purchaser, however, is subject to tax, interest and penalties on all exemptions which are subsequently determined to be erroneous.

(3) Example 1: Z operates a furniture store in Missouri. S/he issues a sale for resale exemption certificate to all of his/her suppliers. Z decides to take a refrigerator out of stock for use in his/her home. Because the sales tax was not paid at the time of the acquisition, Z must now pay sales tax on the actual cost of the refrigerator. Should Z subsequently return the used refrigerator to his/her stock of goods, sales tax would be due on the selling price of the refrigerator when sold to a subsequent purchaser.

(4) Example 2: G owns and operates a grocery store. G buys two (2) dozen brooms for resale and delivers an exemption certificate. G then removes six (6) of these brooms from stock for use in cleaning the store. G is subject to the sales tax on the actual cost of the six (6) brooms removed from stock.

(5) Example 3: K owns a department store and sells, among numerous items, paint which s/he purchases from his/her wholesaler after delivering a sale for resale exemption certificate. In remodeling his/her store, s/he takes from his stock a quantity of paint. K must incorporate the actual cost of the paint in his/her gross receipts and pay the sales tax accordingly.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 22,

Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-60 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

P.F.D. Supply Corporation v. Director of Revenue, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The commissioner, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.

Relying on its previous decision in **Blueside Co. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84) the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to **Blueside**, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the "user" and the sale to that restaurant was a taxable retail sale.

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in **Overland Steel, Inc. v. Director of Revenue**, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the **Overland Steel** case. Not only did respondent have a regulation, 12

CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2), in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.

Finally, the commission held that non-reusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on such items.

12 CSR 10-3.136 Consideration Other Than Money

(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 16 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-61 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.138 Consideration Less Than Fair Market Value

(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-62 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.140 Interdepartmental Transfers

PURPOSE: This rule interprets the sales tax law as it applies to interdepartmental transfers and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Interdepartmental transfers mean the conveyance of tangible personal property between various departments of a single business. This transfer of goods does not constitute a sale and is not subject to sales tax. Transfers of property between separate corporate entities is not an interdepartmental transfer but a sale.

(2) Example: A business having its own printing department prints letterhead on stationery which is consumed by other departments within the same business. In this case, the printing is not taxable since title has not passed for consideration. Sales tax would be due the supplier of the stationery when purchased by the business.

AUTHORITY: section 144.270, RSMo 1994. * This rule was previously filed as rule no. 20 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-63 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

Central Cooling & Supply Co. v. Director of Revenue, 648 SW2d 546 (Mo. banc 1982). Transfers of property between two corporations are subject to sales tax even though the transferor was a subsidiary of the transferee, created for the limited purpose of purchasing goods for the parent corporation. The court held that, "Central and Johnson were organized as separate corporate entities for a proper business purpose. There is no basis for ignoring this separate corporate existence to permit Central to avoid tax liability and gain an unfair advantage over other separately owned corporations."

Bath Antiques v. Director of Revenue, Case No. RS-80-0161 (A.H.C.8/17/82). Sales between parent corporations and subsidiary corporations are not exempt "interdepartmental transfers" as defined in 12 CSR 10-3.140(1). They are taxable sales.

12 CSR 10-3.142 Trading Stamps

PURPOSE: This rule interprets the sales tax law as it applies to trading stamps and interprets and applies sections 144.010 and 144.021, RSMo.

(1) The person redeeming trading stamps for merchandise is subject to sales tax on the selling price of the merchandise. In the event the stamps are redeemed for cash, the person redeeming the stamps is not subject to the sales tax.

(2) When coupon books are sold to customers for use in lieu of money for purchasing merchandise, the sales of the coupons books are not subject to the sales tax. When merchandise is purchased with the coupons, however,

the merchandise is subject to sales tax based on the value of the coupon used.

AUTHORITY: section 144.270, RSMo 1994. * This rule was previously filed as rule no. 23 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-64 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.144 Redemption of Coupons (Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 95 Jan. 22, 1975, effective Feb. 1, 1975. S.T. regulation 010-65 was last filed Dec. 5, 1975, effective Dec. 15, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed Nov. 4, 1992, effective May 6, 1993. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

12 CSR 10-3.146 Core Deposits

PURPOSE: This rule interprets the sales tax law as it applies to core deposits and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Persons selling rebuilt items are subject to the sales tax on the total selling price of the rebuilt items, less credits which may be given by that person for rebuildable items traded-in.

(2) Example 1: Mr. Fixy's generator on his car burns up. He takes the generator off his car and goes to Lefty's Auto Parts Company. Lefty's Auto Parts sells to Fixy a rebuilt generator for forty-five dollars (\$45) and gives him a fifteen dollar (\$15) credit for his rebuildable generator. Lefty's Auto Parts is subject to the sales tax on thirty dollars (\$30).

(3) Example 2: Mr. Fixy also decided to get a different carburetor for his car to increase gas mileage. He drives to Lefty's Auto Parts and purchases a rebuilt carburetor. Lefty's Auto Parts charges forty-five dollars (\$45) for the rebuilt carburetor and tells Mr. Fixy that if he returns his rebuildable carburetor he will be returned the core deposit of fifteen dollars (\$15). Mr. Fixy, after installing the

new carburetor, returns to Lefty's with the old rebuildable carburetor and receives his fifteen dollars (\$15) back. Lefty's Auto Parts is subject to sales tax on thirty dollars (\$30).

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 010-66 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.148 When a Sale Consummates

PURPOSE: This rule is a guideline for determining when a sale consummates.

(1) A sale takes place when the ownership of, or title to, tangible personal property is transferred. In cases where the property being purchased is unknown and cannot be readily determined, title does not pass nor is a sale consummated until that is ascertained. When properties for sale are known, title of goods may pass and the sale made at a time agreed upon by both parties under the contract.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 13 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-67 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.

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

In Kurtz Concrete, Inc. v. Spradling, 560 SW2d 858 (Mo. banc 1978) the court held while title ordinarily will not pass until property is delivered to buyer or reaches agreed place but title will pass notwithstanding that seller is to make delivery if such is the intention of the parties, the intention of the parties to control.

Patton Tully Transportation Company v. Director of Revenue, Case No. RS-85-1594 (A.H.C. 11/25/87). The parties intended that title to the rock would not pass to petitioner unless and until the stone was approved by the Army Corps of Engineers. It is the intent of the parties, by whatever means shown, that determines passage of title. The Administrative Hearing Commission determined no Missouri sales tax due on these transactions as title passed outside Missouri.

Tower Rock Stone Co. v. Director of Revenue, Case No. RS-86-1011 (A.H.C. 4/7/88). The taxpayer contested the final decision of the director of revenue that its sales of stone were subject to Missouri sales tax.

The Administrative Hearing Commission held that it was industry practice for the sale of the stone to be subject to approval by the Army Corps of Engineers. Citing 400.2-400.327, RSMo (1986) (UCC), the Administrative Hearing Commission stated that the sale of the stone was a sale on approval and therefore, title did not pass to the purchaser until the stone was inspected and accepted at the out-of-state job site.

12 CSR 10-3.150 Guidelines on When Title Passes

PURPOSE: This rule is a guideline for determining when title passes.

(1) All relevant facts in each case must be examined to determine when title to property transfers. When the intention of both the seller and the purchaser are not indicated, the following will determine when title passes: where there is an unconditional contract to sell specific goods in a deliverable state, title to the goods are delivered to the purchaser; where there is a contract to sell specific goods, and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, title does not pass until these things are accomplished; and if the contract requires the seller to deliver the goods to the purchaser at a place designated by the purchaser or if the contract calls for the seller to pay transportation or shipping charges, title does not pass until the goods have been delivered to the purchaser as agreed upon.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 13 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-68 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

Kaiser Aluminum & Chemical Sales v. Director of Revenue, Case No. RS-82-0303 (A.H.C. 10/28/83). The issue in this case was whether or not certain bricks shipped from a Missouri plant were subject to Missouri sales tax. It was necessary for the commission to determine where the sale took place. When

no specific provision for the passage of title is contained in the agreement between the parties, the commission must look to other evidence such as industry practice, passage of risk of loss, party paying transportation costs and method and time of payment. The commission cited **Kurtz Concrete, Inc. v. Spradling**, 3560 SW2d 858 (Mo. banc 1978) and **Frontier Bag, Inc. v. Director of Revenue**, Case No. R-80-0073 (A.H.C. 11/12/81). Finding that the goods were shipped FOB from Mexico, Missouri, the commission held that petitioner manifested an intent to have title pass to the buyer at the time and place of shipment. The commissioner looked to section 400.2-401(2)(a), RSMo 1978 Uniform Commercial Code (UCC) in reaching this conclusion. Therefore, the sale did take place in Missouri and tax was applicable.

In Kurtz Concrete, Inc. v. Spradling, 560 SW2d 858 (Mo. banc 1978) the court held while title ordinarily will not pass until property is delivered to buyer or reaches agreed place but title will pass notwithstanding that seller is to make delivery if such is the intention of the parties, the intention of the parties to control.

Centrifugal and Mechanical Industries, Inc. v. Director of Revenue, Case No. RS-85-1810 (A.H.C. 9/21/87). The taxable moment in Missouri is generally the moment of passage of title from seller to buyer. The parties may control this occurrence by their clearly expressed intent. This is best shown by a written agreement. Failing this, the taxpayer may show compelling evidence of industry practice. Taxpayer admitted no written agreement existed other than the invoice which said FOB-St. Louis. There was also no industry-wide practice shown.

Patton Tully Transportation Company v. Director of Revenue, Case No. RS-85-1594 (A.H.C. 11/25/87). The parties intended that title to the rock would not pass to petitioner unless and until the stone was approved by the Army Corps of Engineers. It is the intent of the parties, by whatever means shown, that determines passage of title. The Administrative Hearing Commission determined no Missouri sales tax due on these transactions as title passed outside Missouri.

Tower Rock Stone Co. v. Director of Revenue, Case No. RS-86-1011 (A.H.C. 4/7/88). The taxpayer contested the final decision of the director of revenue that its sales of stone were subject to Missouri sales tax.

The Administrative Hearing Commission held that it was “industry practice” for the sale of the stone to be subject to approval by the Army Corps of Engineers. Citing 400.2-400.327, RSMo (1986) (UCC), the Administrative Hearing Commission stated that the sale of the stone was a “sale on approval” and therefore, title did not pass to the purchaser until the stone was inspected and accepted at the out-of-state job site.

12 CSR 10-3.152 Physicians and Dentists (Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 68 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-69 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Dec. 9, 1981, effective April 11, 1982. Amended: Filed Feb. 13, 1985, effective June 13, 1985. Amended: Filed Dec. 22, 1988, effective June 11, 1989. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

In Kilbane v. Director of Department of Revenue, 544 SW2d 9 (Mo. banc 1976) the court held purchases by dental laboratories are for use and consumption of the professional and are subject to sales tax at time of purchase.

Larimore, Baker, Pettigrew & Associates, Inc. v. Director of Revenue, Case No. R-80-0112 (A.H.C. 4/29/83). The issue in this case was the need for an optometrist to collect and remit the sales tax on the sale of lenses to its clients. The taxpayer argued that the lenses were part of the service and that petitioner was exempt. In support of its position taxpayer argued that the exemption provided by section 144.010.1(8), RSMo for purchases of tangible personal property made by duly licensed physicians, dentists and veterinarians used in the practice of their professions was applicable to optometrists and this was proved by the fact that the department previously had a regulation, Rule No. 68, in effect which until January 10, 1976 granted optometrists this exemption. The commission found that the express mention of physicians, dentists and veterinarians implied the exclusion of optometrists. Optometrists were not entitled to this exemption, and the department’s regulation (which was repealed) was void, because it went beyond the authority granted by the statute.

Petitioner’s second argument was that it sold these lenses at cost and that any assessment should be limited in amount to its orig-

inal purchase price for these lenses. The commission found that the sales price should not include overhead costs and overhead costs attributable to contact lenses such as the sales of lenses and overhead fairly attributable to these professional services and profit.

W.H. Hopmeier, Inc. v. Director of Revenue, Case No. RS-79-0295 (A.H.C. 7/19/82). The Department of Revenue is not required to give taxpayers notice of change in law and is not estopped from collection of tax by an unauthorized pronouncement of a department agent that assessments would not be made. Assessment for first five days in May 1979 are void because effective date of the statute was May 5, 1979.

12 CSR 10-3.154 Optometrists, Ophthalmologists and Opticians (Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 68 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-70 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Emergency amendment filed Oct. 1, 1979, effective Oct. 11, 1979, expired Feb. 5, 1980. Amended: Filed Oct. 1, 1979, effective April 11, 1980. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

Larimore, Baker, Pettigrew & Associates, Inc. v. Director of Revenue, Case No. R-80-0112 (A.H.C. 4/29/83). The issue in this case was the need for an optometrist to collect and remit the sales tax on the sale of lenses to its clients. The taxpayer argued that the lenses were part of the service and that petitioner was exempt. In support of its position taxpayer argued that the exemption provided by section 144.010.1(8), RSMo for purchases of tangible personal property made by duly licensed physicians, dentists and veterinarians used in the practice of their professions was applicable to optometrists and this was proved by the fact that the department previously had a regulation, Rule No. 68, in effect until January 10, 1976 granted optometrists this exemption. The commission found that the express mention of physicians, dentists and veterinarians implied the exclusion of optometrists. Optometrists were not entitled to this exemption, and the department’s regulation (which was repealed) was void, because it went beyond the authority granted by the statute.

Petitioner’s second argument was that it sold these lenses at cost and that any assess-

ment should be limited in amount to its original purchase price for these lenses. The commission found that the sales price should not include that the costs and overhead costs attributable to contact lenses such as the sales of lenses and overhead fairly attributable to these professional services and profit.

12 CSR 10-3.156 Dental Laboratories (Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-71 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

Kilbane v. Director of Dept. of Revenue, 544 SW2d 9 (Mo. banc 1976). Sales tax was assessed on gold and porcelain crown and bridgework fabricated on prescription by dental laboratory for dentists. Fact that rule promulgated by director of revenue does not include crowns or bridgework, but does list several items and then adds “etc.”, indicates that other things are included. It does not purport to list each and every kind of purchase which will be taxable. The fact that the item so used by the dentist retains its form does not mean that the doctor has not used it “in the practice of his profession.” The court held purchases by dental laboratories are for use and consumption of the professional and are subject to sales tax at time of purchase.

12 CSR 10-3.158 Sale on Installed Basis (Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 17 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-74 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

In Kurtz Concrete, Inc. v. Spradling, 560 SW2d 858 (Mo. banc 1978) the court held while title ordinarily will not pass until property is delivered to buyer or reaches agreed place but title will pass notwithstanding that seller is to make delivery if such is the intention of the parties, the intention of the parties to control.

12 CSR 10-3.160 Funeral Receipts (Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 82 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-75 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.162 Pawnbrokers
(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 29 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-76 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

Martin Coin Co. of St. Louis v. Richard A. King, 665 SW2d 939 (Mo. banc 1984). The court held in *Scotchmen's Coin Shop v. Administrative Hearing Commission*, 654 SW2d 873 (Mo. banc 1983) that sales of coins for their value as precious metal constituted the sale of personal property subject to sales tax. Martin Coin attempted to distinguish its activities from those of Scotchman's by asserting that it was an agent between two principals and that it was not a vendor, but merely a broker. Martin Coin purchased the coins in question on its own line of credit, was liable to the vendor of the coins, bore the risk of nonpayment by its customers, deposited the proceeds from the sales in its own bank account and paid the supplier for coins ordered. In the court's opinion, Martin Coin was involved in both (a) the purchase of coins from the supplier and (b) the sale of coins to customers. The latter constituted a taxable event. Additionally, the court noted that while Martin Coin attempted to label itself an agent, rather than a vendor, there was no evidence in the record to indicate that the vendors of the coins had any control over Martin Coin; thus a key element of agency was lacking. The court refused on procedural grounds to hear the issue which Martin Coin raised in its brief concerning invasion of the federal government's exclusive power to regulate foreign commerce.

12 CSR 10-3.164 Installment Sales and Repossessions
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 37 Jan. 22, 1973, effective Feb. 1, 1973. S.T.

regulation 010-77 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed March 12, 1986, effective Aug. 25, 1986. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.166 Seller of Boats
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-77A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.167 Sales of Food and Beverages to and by Public Carriers
(Rescinded May 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 14, 1976, effective Jan. 1, 1977. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed May 12, 1987, effective Aug. 27, 1987. Rescinded: Filed Nov. 9, 2000, effective May 30, 2001.

12 CSR 10-3.168 Documentation Required

PURPOSE: This rule interprets the sales tax law as it applies to the documentation required for deductible transactions and interprets and applies sections 144.030 and 144.080, RSMo.

(1) Transactions which are deductible under the sales tax law can be deducted only if the transaction is documented so as to be capable of verification on audit.

(2) Example 1: Mr. Ray wished to claim a deduction on account of the sale of tangible personal property to an agency of the United States Government. Mr. Ray may deduct the sale if he can identify the source and amount of payment. The check stub may be sufficient for identifying the source of payment for audit purposes.

(3) Example 2: Snap Grocery Store makes a cash sale to Cool Cafe. Cool has issued the appropriate type exemption certificate. Snap Grocery may deduct the receipts from the sale if a ticket is prepared identifying the property purchased, the name of the cus-

tomers, date, amount of the transaction and a signed exemption certificate.

(4) Example 3: M & M Motor Parts deducts receipts for sales made over the counter to cash customers who have delivered proper exemption certificates. A ticket is prepared by M & M indicating the date, amount and the items purchased. CASH is written in the space provided for the customer's name. The deduction would be disallowed; the transaction could not be related to a specific purchaser or exemption certificate.

(5) Example 4: Fast Motor Supply sells replacement parts and accessories to Good Used Cars. Good is registered only as a used car dealer. Good should execute an exemption certificate providing his/her dealer's number to Fast. Fast may then deduct the sales to Good from his/her gross receipts.

AUTHORITY: section 144.270, RSMo 1994. * S.T. regulation 010-79 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.170 Computer Printouts
(Rescinded November 12, 1977)

AUTHORITY: section 144.270, RSMo 1969. Rule last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed May 16, 1977, effective Nov. 12, 1977.

12 CSR 10-3.172 Advertising Signs
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 74 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-81 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

State ex rel. Otis Elevator Co. v. Smith, 212 SW2d 580 (Mo. banc 1948). Otis Elevator Company was in the business of designing, constructing, installing and repairing elevators in buildings. Respondent claimed there was no sales tax due to petitioner Smith because the materials used to construct new elevators or to modify existing elevators lost their character or status as tangible personal

property and became a part of the real property coincidentally with their delivery and attachment to the building. Respondent kept a title retention clause in his contract with the building contractor allowing him to retain title to the elevator until he was paid in full and if not, to remove the elevator. Judge Ellison held this clause prevented the tangible personal property from being joined with the realty. Absent this contractual clause, the court would have reached a different conclusion.

Where the contract for installation of new elevators, and reconstruction or major repairs to existing elevators whereby elevator company retains title to materials until paid, the elevator company is liable for sales tax. Had the contract not contained the title retention clause the elevator company would not be liable for sales tax.

Where elevator company does repair work on existing elevators and supplies small parts which become part of the elevator, and does not retain title to the parts, the company is not subject to sales tax. The parts become part of the realty (see *Air Comfort Service, Inc. v. Director of Revenue*, Case No. RS-83-1982 (A.H.C. 4/25/84) and *Marsh v. Spradling*, 537 SW2d 402 (1976)).

12 CSR 10-3.174 Stolen or Destroyed Property

(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-81A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.176 Fees Paid in or to Places of Amusement, Entertainment or Recreation

PURPOSE: This rule interprets the sales tax law as it pertains to the taxation of fees paid in or to places of amusement, entertainment or recreation.

(1) Definitions.

(A) Place of amusement is any location in which amusement activities comprise more than a *de minimus* portion of the business activities of the location (see *Spudich v. Director of Revenue*, 745 SW2d 677 (Mo. banc 1988) and *Soccer World West, Inc. v. Director of Revenue*, A.H.C. No. 89-001797RS (1990)).

(B) Amusement is a pleasurable diversion or entertainment (see *Spudich v. Director of Revenue*, 745 SW2d 677 (Mo. banc 1988)).

(C) Homeowners' association is a not-for-profit organization whose membership is limited to residential property owners or tenants in a specified development, subdivision or area, which provides services for the betterment of the development, subdivision or area or for the benefit of the property owners or their tenants.

(2) All fees or charges, including fees or charges paid for admission and seating accommodations, paid to or in any place of amusement, entertainment, recreation, game or athletic event are subject to sales tax when operated by for-profit and not-for-profit organizations as business activities. Service charges in addition to the stated ticket price on tickets sold for admission to places of amusement are subject to sales tax if levied by the operator or proprietor of the place of amusement. Service charges on tickets sold for admission to places of amusement levied by sellers or handlers other than the operator or proprietor of the place of amusement are not subject to sales tax. Tax on sales of all tickets, including season tickets, shall be collected and remitted by the seller at the time payment for the tickets is received (also see 12 CSR 10-3.048).

(3) Example: A season ticket holder pays five hundred dollars (\$500) for a season ticket entitling him/her to attend all home games of a team. The tax is computed on the five hundred dollar (\$500) admission, whether or not the holder attends the games and regardless of the price at which the seat would have been sold for individual games.

(4) Some examples of fees or charges for admission or seating accommodations in or to places of amusement, entertainment or recreation include, but are not limited to, the following: any entrance charges, accommodation charges or other fees to gain entrance or access to theaters, fairgrounds, exhibition halls, rodeos, auto shows, races and tractor pulls, horse shows, boat shows, bowling alleys, operas, concerts, music shows, athletic contests and events (including running and bicycling races and tournaments), gymnasiums, fishing tournaments, zoos, dances, shooting galleries, tennis courts, roller and ice skating rinks, billiard and pool halls, handball courts, arcades, nontherapeutic massage parlors, campgrounds, card and other games, swimming pools, golf courses, circuses, carnivals, fairs, parks, amusement parks, resort complexes and other recreation-

al attractions and entertainment including cover charges in nightclubs or taverns and rides on sightseeing helicopters, airplanes, balloons, boats and buses.

(5) No sales tax shall be imposed upon receipts from coin-operated amusement devices unless those devices are located within places of amusement, entertainment or recreation.

(6) Some examples of places which would not normally be treated as places of amusement include a hotel lobby, a restaurant, a motel, a laundromat, a convenience store, an airport, bus terminal or other similar places. However, if a location which would not normally be treated as a place of amusement has a department, room or similar area, which is geographically separated and set aside from the rest of the location through the use of walls, partitions, screens, fences or other partitioning, for amusement purposes or events, then the location will be presumed by the director of revenue to be a place of amusement. Any area, whether segregated or not, which contains fifteen (15) or more coin-operated amusement devices will be presumed by the director of revenue to be a place of amusement.

(7) The operator of a coin-operated amusement device located in a place of amusement, entertainment or recreation shall remit to the Department of Revenue sales tax upon only that portion of the proceeds derived from the coin-operated amusement device as is received by the operator, pursuant to the agreement between the operator and the proprietor of the place of amusement, entertainment or recreation. The proprietor shall remit to the Department of Revenue sales tax on his/her share of the proceeds; provided, that the operator of the device at any time does not gain control of all of the proceeds derived from the device and that the operator issue in duplicate a collection receipt, prepared by the operator, signed by both the proprietor and the operator at the time of the distribution of the proceeds. If this procedure is not followed, both the operator and the proprietor jointly shall be responsible for payment of sales tax on the entire amount of proceeds derived from the coin-operated amusement devices.

(8) Amounts paid by or to not-for-profit civic, social, service or fraternal organizations solely in their civic or charitable functions and activities are not subject to sales tax. All other fees or charges paid into a

place of amusement operated by a not-for-profit civic, social, service or fraternal organization are subject to sales tax.

(9) Taxable fees and charges within a place of amusement include, but are not limited to, amounts paid for the use of snow skis, bowling shoes, roller or ice skates, golf carts, water skis, massage machines, lockers, tanning booths and other equipment and property, fees for billiards, bowling and amusement rides, green fees and tennis court fees, lift tickets, fees for sightseeing rides or flights and fees for separate amusement or recreation activities within resort complexes (also see 12 CSR 10-3.048).

(10) Example: Mr. A is the owner and operator of a bowling alley and purchases bowling shoes for use in operating the bowling alley. Mr. A shall pay tax on the purchase of the bowling shoes. When Mr. A charges his customers for the use of the bowling shoes, the usage fees are subject to sales tax as a fee paid in a place of amusement even though sales tax was previously paid on the purchase of the shoes.

(11) Specifically exempted from tax are amounts paid or charges for admission or participation or other fees paid by or other charges to individuals in or to any place of amusement, entertainment or recreation, games or athletic events, including museums, zoos and planetariums, owned or operated by a municipality or other political subdivision where all the proceeds derived from them benefit the municipality or other political subdivision and do not inure to any private person, firm or corporation (see section 144.030.2(17), RSMo).

(12) Amounts paid for lessons, whether within or not within a place of amusement, are not subject to sales tax. Examples of those lessons or other nontaxable activities include dance, karate, gymnastic, piano and singing lessons, haircuts, shoe polishing and child care. Notwithstanding this section, all amounts periodically paid in or to an organization as dues or noninstructional participation fees are subject to tax pursuant to section (2) of this rule.

(13) If a place of amusement is used by an outside organization which pays all fees within the place of amusement, the treatment of these fees is based on the tax status of the outside organization.

(14) Any amount paid for admission and seating accommodations or fees or charges in or

to a place of amusement, entertainment, recreation, game or athletic event also are subject to all applicable local sales taxes in the same manner as the amounts paid are subject to the state sales tax. The location of the coin-operated amusement device, not the location of the owner of the device, determines the applicability of the local sales tax.

(15) Amounts paid in or to homeowners' associations specifically for admission to or use of amusement, entertainment or recreational facilities or events are subject to sales tax. Amounts paid in or to homeowners' associations for nonentertainment or nonrecreational services, such as subdivision security, street lights, snow removal, insurance, maintenance, utilities or trash removal are not subject to sales tax. If a homeowners' association charges each owner or tenant a set fee which covers operation and maintenance of all recreational and nonrecreational services and facilities, regardless if the owner or tenant makes use of the recreational facilities, the entire amount is not taxable.

AUTHORITY: section 144.270, RSMo 1994. * This rule was previously filed as rule no. 49 April 20, 1974, effective April 30, 1974. S.T. regulation 010-82 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded and readopted: Filed March 11, 1983, effective Sept. 11, 1983. Amended: Filed May 10, 1984, effective Nov. 11, 1984. Amended: Filed Dec. 11, 1984, effective May 25, 1985. Emergency amendment filed Nov. 15, 1990, effective Nov. 25, 1990, expired March 24, 1991. Emergency rescission and rule filed Jan. 3, 1991, effective Jan. 13, 1991, expired May 13, 1991. Emergency rescission and rule filed May 3, 1991, effective May 13, 1991, expired Sept. 9, 1991. Rescinded and readopted: Filed Jan. 3, 1991, effective June 10, 1991.

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

L & R Distributing, Inc. v. Missouri Department of Revenue, 529 SW2d 375 (Mo. banc 1975). Places such as hotel lobbies, restaurants, motels, bus stations do not constitute a place of amusement or entertainment within meaning of statute imposing sales tax on fees paid to or in any place of amusement or entertainment and are not converted into such by the installation of coin-operated devices such as pinball machines.

Blue Springs Bowl v. Spradling, 551 SW2d 596 (Mo. banc 1977). Commercial bowling establishment was place of amusement, enter-

tainment or recreation mentioned in statute which provides for sales tax on receipts from amounts paid for admission to places of amusement, entertainment or recreation, as well as to games and athletic events, which imposes tax on receipts from fees paid to or in these places.

Chase Resorts, Inc. v. Director of Revenue, Case No. RS-79-251 (A.H.C. 09/30/82). Taxpayer owns and operates the Lodge of the Four Seasons which provides certain activities and services including room rental, meal and bar service, convention facilities, golf, tennis, horseback riding, bowling and motion pictures. The Administrative Hearing Commission held the lodge to be a place of recreation, amusement and entertainment with section 144.020.1(2), RSMo. The commission noted that "each activity, in and of itself, represents a separate amusement or recreation, but each is related to and inseparable from the overall conduct of petitioner's resort." The moneys paid for the rentals in question such as rental of bowling shoes, horse and riding equipment, water skis and equipment, etc. also were held to constitute "fees paid to or in, any place of amusement, entertainment or recreation" as to be subject to sales tax pursuant to section 144.020.1(2), RSMo.

L & R Distributing Co., Inc. v. Missouri Department of Revenue, 648 SW2d 91 (Mo. banc 1983). The department appealed from the judgement of the Circuit Court of the City of St. Louis finding the director in civil contempt for violating a 1974 injunction prohibiting the taxation of gross receipts of coin-operated amusement devices. The 1974 injunction was affirmed in *L & R Distributing Co., Inc. v. Missouri Department of Revenue*, 529 SW2d 375 (Mo. banc 1975). Subsequent to the decision in that case, the department had enacted sales tax rule 12 CSR 10-3.176 which provided that sales tax could be charged on the gross receipts of coin-operated amusement devices so long as they were located in places of amusement. The department relied on section 144.020.1(2), RSMo which imposed a sales tax upon the gross receipts of places of amusement. The court reversed the circuit court agreeing that the decision in *L & R Distributing* did not prohibit the taxation of gross receipts of places of amusement. The court found that section 144.020.1(2), RSMo placed a tax on all fees paid to or in places of amusement, including those paid for the use of coin-operated devices. Because the department was found to be correct on the

merits, the court did not determine whether civil contempt was an appropriate remedy.

St. Louis Country Club v. Administrative Hearing Commission, 657 SW2d 614 (Mo. banc 1983). The issue in this case was whether private country clubs which are not open to the public must pay sales tax on fees charged to members who bring guests to enjoy certain club facilities.

The organization in question was an IRC Section 501(C)(7) not-for-profit tax-exempt corporation. Attendance at the club by non-members was strictly limited. Fees for golf and tennis were charged.

Before discussing the merits of the matter the court held that a) the director of revenue does not have to personally sign and issue each deficiency assessment; b) an opinion letter, which is not directed towards the taxpayer, written by an earlier director of revenue and which erroneously states the law does not stop an assessment by a later director of revenue; and c) the waiver of the statute of limitations entered into by the taxpayer was a valid contractual agreement supported by consideration and, therefore, it would be recognized.

With respect to the merits of the case, the taxpayer asserted that it should not be assessed tax because it is a private not-for-profit social organization which is not engaged in business and the guest fees are not paid to or in any place of amusement or recreation. Therefore, they did not fall within section 144.010.1(8), RSMo nor were they a business as defined in section 144.010.1(2), RSMo.

The court found without comment that the country club was a place of entertainment. With respect to whether it was a place of business, the court said that the definition of business contained in section 144.010.1(2), RSMo is special. The definition “any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage either direct or indirect” was found by the court to be broad enough to include the activity of allowing guests to use facilities for a fee. Allowing guests to use the facilities benefits the club by attracting members.

City of Springfield v. Director of Revenue, 659 SW2d 782 (Mo. banc 1983). The issue in this case was whether or not the director of revenue could legally assess sales tax on concession, admission and use fees charged by the city park board. The Supreme Court found first that Mo. Const. Art. III, Section 39(10), which prohibits a tax upon the “use, purchase or acquisition of property paid for

out of the funds” of the city did not prohibit the imposition of tax upon the fees in question. There was no tax on the use, purchase or acquisition of property paid for from city funds. Secondly, the court found that section 144.020.1(2), RSMo brought the sale of recreational activities and concessions within the purview of the sales tax statute. The operation of the park and its facilities and services did constitute a business by a person making sales at retail and the park board did constitute a seller within the various definitions contained in section 144.010, RSMo.

National Land Management, Inc., v. Director of Revenue, Case No. RS-81-0639 (A.H.C. 6/6/84). The issue in this case was whether time sharing arrangements at resorts are subject to sales tax. The commission initially found that the receipts in question were not taxable pursuant to section 144.020.1(2), which provides for imposition of tax on a) sums paid for admission to places of amusement, b) sums paid for seating accommodations therein and c) all fees paid to or in place of amusement.

Regarding the first provision, the commission found that the sums in question were not paid for “admission” as that term is commonly understood. The commission also found that accommodations were not the subject for which the sums were paid. With respect to the third provision, the commission found that the assessments did not apply to any separate “fees” charged for the use of petitioner’s amenities but were based on charges for the time share occupancies.

Next, the commission found that section 144.020.1(6) was inapplicable, because the payments in question did not constitute charges for rooms furnished in any hotel, motel, inn, tourist camp or tourist cabin. Arriving at this conclusion the commission held, “If the relationship is that of innkeeper and guest, then petitioner is providing a taxable service; if not, then petitioner’s time share activities are not taxable under section 144.020.1.”

Looking at the law from various states, the commission held that the agreements in question constituted vacation leases creating an assignable interest in real property. Because of the thirty-year lease, the occupants are not transitory in the sense that travelers or tourists are. Rooms in petitioner’s resort are not regularly rented because they are only open to the general public when they are not already reserved pursuant to one of the previously mentioned agreements. Thus, the director of revenue failed to meet his burden of proof by establishing that the agreements in question constituted taxable service in the

form of a room furnished at a hotel, motel, tourist camp or tourist cabin by an innkeeper.

Fostaire Harbor, Inc. v. Missouri Director of Revenue, 679 SW2d 272 (Mo. banc 1984). Taxpayer first challenged the commission’s finding that fees paid for helicopter flights around the City of St. Louis were taxable fees paid to or in a place of amusement, entertainment or recreation, rather than fees paid for a tax-exempt educational service. Secondly, taxpayer asserted that even if tax liability existed, the finding of the commission that there was not neglect or refusal to file sales tax returns relieved it of any duty to pay interest on the amounts due.

With respect to the first issue, the court held that the tax applies generally to fees paid in or to a place of amusement despite the fact that some educational benefit is derived at that place of amusement. That some educational value might be derived from the expenditure of a particular fee does not make it exempt from tax.

With respect to the second issue, the court held that interest is not a penalty and therefore a finding of neglect or refusal was not required before interest could be imposed. While interest might be a penalty under some circumstances, and thus could only be imposed upon a finding of neglect or refusal, such is not the case under Missouri’s sales tax law.

Richard Lynn, d/b/a Kansas City Excursion v. Director of Revenue, 689 SW2d 45 (Mo. banc 1985). The issues in this case were whether 1) the taxpayer’s receipts from its Missouri River boat excursions were exempt from sales tax under section 144.030.1, RSMo as receipts from activities in interstate commerce; 2) the director was estopped from assessing sales tax and penalties because of certain prior actions and statements by the director’s agent; 3) the taxpayer was shielded from penalties by the exercise of good faith; and 4) the two-year statute of limitations applied to limit assessment prior to 1978.

The court resolved the interstate commerce issue by citing the decision in **Fostaire Harbor, Inc. v. Missouri Director of Revenue**, 679 SW2d 272 (Mo. banc 1984). **Fostaire** held that fees paid for admission to helicopter rides for sightseeing purposes are fees paid in or to a place of amusement and thus are taxable. The fees paid to the taxpayer in **Kansas City Excursion** were intended to provide a sightseeing tour, not transportation to a point outside the territorial waters of the state of Missouri; the interstate commerce provision

of section 144.030.1, RSMo was therefore inapplicable to these local transactions.

Regarding the estoppel issue, the court noted the long-standing rule that the director of revenue and his subordinates have no power to vary the force of statutes. Therefore, the actions of prior directors and their subordinates will not estop subsequent directors from collecting taxes due and owing the state except in situations where manifest injustice would otherwise occur.

In determining the issue of good-faith, the court found that the taxpayer had received an earlier assessment on the same issue and had been advised by counsel of a possible collection action. As the taxpayer was clearly on notice of a possible tax liability, failure to file in years subsequent to that assessment did not constitute good-faith, imposition of the penalty under section 144.250.1, RSMo for neglect to file a tax return was therefore appropriate. In addition, neglect or refusal to file returns tolls the statute of limitations in section 144.220, RSMo thereby permitting the assessment of sales tax in this case beyond the statutory period.

Keeley's Park Rink, Inc. et al. v. Director of Revenue, Case Nos. RS-84-2729, RS-84-2730 and RS-84-2731 (A.H.C. 02/26/87). The Administrative Hearing Commission held that the receipts from the rental of roller skates and coin-operated machines were subject to sales tax.

Bally's LeMan's Family Fun Centers, Inc. v. Director of Revenue, 745 SW2d 683 (Mo. banc 1988). The court found that section 144.020.1(2), RSMo was clear and unambiguous in this case. The statute plainly provides for a sales tax to be imposed on all fees paid to or in places of amusement and the like. Since Bally's fun centers are places of amusement, moneys paid to Bally to operate coin-operated devices are fees paid to or in places of amusement.

Robert Philip Spudich, d/b/a Columbia Billiard Center v. Director of Revenue, 745 SW2d 677 (Mo. banc 1988). The Supreme Court found that billiard halls are commonly thought of as places of amusement. The fact that revenues from the sale of food and drink exceed revenue from the sale of billiard table playing time does not reduce the billiard center's character as a place of amusement. The billiard table receipts were subject to sales tax.

The court found that there was no equal protection violation. The state has a large leeway in making classifications and drawing lines which in its judgement produce reason-

able systems of taxation. The taxation of coin-operated video machines in places of amusement but not in other nonamusement locations is reasonable in that the burdens and expenses of collecting sales tax from locations in which the fees collected for coin-operated amusement devices are minimal. The financial benefits to the state offset the minimal burden placed upon the coin-operated amusement devices located in places of amusement.

Capitol Automated Ticket Services, Inc. v. Director of Revenue, Case Nos. RS-84-1813 and RS-85-1778 (A.H.C. 09/12/88). The issue in this case considered whether sales tax could be imposed on "service charges" levied by the petitioner as a fee on the purchase of tickets to various events. The Administrative Hearing Commission determined that the "service charges" were a nontaxable service and not a fee charged for admission to a place of amusement.

Soccer World West, Inc. v. Director of Revenue, Case No. 90-001797RS (A.H.C. 09/14/90). The issue in this case was whether fees paid by teams to participate in soccer league play were subject to sales tax as "fees paid to or in a place of amusement" or were exempt from the imposition of sales tax as "membership dues"? The Administrative Hearing Commission found that soccer clubs are places of amusement, membership dues are fees paid in or to a place of amusement and that there is no statutory exemption from sales taxes for "membership dues."

12 CSR 10-3.178 Dues Are Not Admissions
(Rescinded April 29, 1991)

AUTHORITY: section 144.270, RSMo 1986. S.T. regulation 010-83 was filed Oct. 28, 1975, effective Nov. 7, 1975. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Emergency rescission filed Nov. 15, 1990, effective Nov. 25, 1990, expired March 24, 1991. Rescinded: Filed Nov. 15, 1990, effective April 29, 1991.

St. Louis Country Club v. Administrative Hearing Commission, 657 SW2d 614 (Mo. banc 1983). The issue in this case was whether private country clubs which are not open to the public must pay sales tax on fees charged to members who bring guests to enjoy certain club facilities.

The organization in question was an IRC Section 501(C)(7) not-for-profit tax-exempt corporation. Attendance at the club by non-

members was strictly limited. Fees for golf and tennis were charged.

Before discussing the merits of the matter the court held that a) the director of revenue does not have to personally sign and issue each deficiency assessment; b) an opinion letter, which is not directed towards the taxpayer, written by an earlier director of revenue and which erroneously states the law does not stop an assessment by a later director of revenue; and c) the waiver of the statute of limitations entered into by the taxpayer was a valid contractual agreement supported by consideration and, therefore, it would be recognized.

With respect to the merits of the case, the taxpayer asserted that it should not be assessed tax because it is a private not-for-profit social organization which is not engaged in business and the guest fees are not paid to or in any place of amusement or recreation. Therefore, they did not fall within section 144.010.1(8), RSMo nor were they a business as defined in section 144.010.1(2), RSMo.

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12 CSR 10-3.179 Separate Taxable Transactions Involving the Same Tangible Personal Property and the Same Taxpayer
(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

12 CSR 10-3.182 Excursions

PURPOSE: This rule interprets the sales tax law as it applies to excursions and interprets and applies sections 144.010 and 144.020, RSMo.

(1) The receipts derived from excursion boats, airplanes and helicopters are subject to the sales tax.

*AUTHORITY: section 144.270, RSMo 1994. * S.T. regulation 010-85 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

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

Fostaire Harbor, Inc. v. Missouri Director of Revenue, 679 SW2d 272 (Mo. banc 1984). Taxpayer first challenged the commission's finding that fees paid for helicopter flights around the City of St. Louis were taxable fees paid to or in a place of amusement, entertainment or recreation, rather than fees paid for a tax-exempt educational service. Secondly, taxpayer asserted that even if tax liability existed, the finding of the commission that there was no neglect or refusal to file sales tax returns relieved it of any duty to pay interest on the amounts due.

With respect to the first issue, the court held that the tax applies generally to fees paid in or to a place of amusement despite the fact that some educational benefit is derived at that place of amusement. That some educational value might be derived from the expenditure of a particular fee does not make it exempt from tax.

With respect to the second issue, the court held that interest is not a penalty and therefore a finding of neglect or refusal was not required before interest could be imposed. While interest might be a penalty under some circumstances, and thus could only be imposed upon a finding of neglect or refusal, such is not the case under Missouri's sales tax law.

Richard Lynn, d/b/a Kansas City Excursion v. Director of Revenue, No. 66130 (Mo. banc 4/30/85). The issues in this case were whether 1) the taxpayer's receipts from its Missouri River boat excursions were exempt from sales tax under section 144.030.1. as receipts from activities in interstate commerce; 2) the director was estopped from assessing sales tax and penalties because of certain prior actions and statements by the director's agents; 3) the taxpayer was shielded from penalties by the exercise of good-faith; and 4) the two-year statute of limitations applied to limit assessment prior to 1978.

The court resolved the interstate commerce issue by citing the decision in **Fostaire Harbor, Inc. v. Missouri Director of Revenue**, 679 SW2d 272 (Mo. banc 1984). **Fostaire** held that fees paid for admission to helicopter rides for sightseeing purposes are fees paid in or to a place of amusement and thus are taxable. The fees paid to the taxpayer in **Kansas City Excursion** were intended to provide a

sightseeing tour, not transportation to a point outside the territorial waters of the state of Missouri; the interstate commerce provision of section 144.030.1. was therefore inapplicable to these local transactions.

Regarding the estoppel issue, the court noted the long-standing rule that the director of revenue and his subordinates have no power to vary the force of statutes. Therefore, the actions of prior directors and their subordinates will not estop subsequent directors from collecting taxes due and owing the state except in situations where manifest injustice would otherwise occur.

In determining the issue of good-faith, the court found that the taxpayer had received an earlier assessment on the same issue and had been advised by counsel of a possible collection action. As the taxpayer was clearly on notice of a possible tax liability, failure to file in years subsequent to that assessment did not constitute good-faith, imposition of the penalty under section 144.250.1 for neglect to file a tax return was therefore appropriate. In addition, neglect or refusal to file returns tolls the statute of limitations in section 144.220, thereby permitting the assessment of sales tax in this case beyond the statutory period.

12 CSR 10-3.184 Electricity, Water and Gas

PURPOSE: This rule interprets the sales tax law as it applies to the sale of electricity, water and gas, and interprets and applies sections 144.010, 144.020 and 144.030.2(23), RSMo.

(1) Sales for domestic use shall mean all sales of electricity, electrical current, natural, artificial or propane gas, metered water service, unmetered water service in St. Louis City, wood, coal and home-heating oil which an individual occupant of a residential premises uses for nonbusiness, noncommercial, or nonindustrial purposes. These domestic purchases are exempt from state sales tax.

(2) The basic rate paid or charged on all sales of electricity, electrical current, water and natural or artificial gas for commercial or industrial consumption is subject to the sales tax whether the seller is a private, municipally-owned or rural electric cooperative or water district. Industrial consumption includes use in manufacturing, processing, compounding, mining, producing, refining, building, construction, irrigation and the like.

(3) Where electricity, water or gas is sold from a single meter to a single purchaser for two (2) or more purposes, the predominant use for which the sale is made through each meter shall determine its taxable status for the seller. Where the purchaser has all the electricity, water or gas used at a given location furnished through a single meter, the purchaser is responsible for determining that portion of the electricity, water or gas which is for domestic, commercial or industrial consumption. When the purchaser has all the electricity, water or gas furnished through a single meter for use at residential apartments or condominiums, including service for common areas and facilities and vacant units, the usage shall be deemed domestic use. If the predominant use of a single meter is for an exempt purpose and no tax is collected from the purchaser by the seller with respect to that meter, the purchaser is responsible for all sales taxes due to that portion which is not exempt. The purchaser should file a sales tax return showing the total amount of electricity, water or gas consumed and the amount claimed as an exemption.

(4) All basic rate charges for electricity, water or gas are subject to the sales tax whether actually consumed or not, including any advance or equalized payment, surcharge, minimum or flat rate. Meter deposits and separately stated service charges are not subject to the sales tax. Receipts from services rendered by utilities, such as installation and repair, are not subject to sales tax when clearly segregated and separately stated from parts or material on the billing or invoice. Any franchise, occupation, sales, license, excise, privilege or similar tax or fee of any kind which is not part of the basic rate paid or charged is not subject to the sales tax.

(5) Sewer service is not taxable and the inclusion of that service charge on water bills is not a part of the basic water rate subject to the sales tax.

(6) Sales of electricity, water or gas to licensed or regulated utilities or common carriers, such as water or pipeline companies, telephone and telegraph companies and railroads, are subject to sales tax.

(7) Example 1: Mr. Jones owns an apartment house which is serviced through a single meter. Mr. Jones charges his tenants a basic rent and he also charges extra for electricity. Mr. Jones is entitled to a domestic use exemption for the electricity purchased for the residential apartments, including service

for common areas and facilities and vacant units.

(8) Example 2: Mrs. Smith owns a large home. She rents out the room above the garage to a local student and she operates a beauty parlor in her basement. The home is serviced by a single meter and sixty percent (60%) of the electricity is used by Mrs. Smith for her personal use, twenty-five percent (25%) for her beauty parlor and fifteen percent (15%) for the rental unit. Because the predominant use of the electricity is for domestic use, Mrs. Smith does not pay any sales tax on her monthly bills. Mrs. Smith must file a sales tax return and pay sales taxes on the twenty-five percent (25%) which is not exempt and the tax return should be filed at the same time as her state income tax return (April 15 of the following year).

(9) Example 3: Assume the same facts as in section (8) except that twenty-five percent (25%) of the electricity is for domestic use and seventy-five percent (75%) is for non-domestic use in the beauty parlor. Because the predominant use of the electricity is for non-domestic use, Mrs. Smith pays sales taxes to the utility company on her entire bill. Mrs. Smith should file a request for refund between January 1 and April 15 of the following year to obtain a refund of sales taxes paid on the domestic use portions of her electricity purchases—twenty-five percent (25%).

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 55 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-86 was last filed Dec. 3, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Dec. 30, 1983, effective April 12, 1984. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995.*

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

Hyde Park Housing v. Director of Revenue, 850 SW2d 82 (Mo. banc 1993). Taxpayers appealed a decision of the Administrative Hearing Commission which upheld assessments of sales tax and interest on purchases of electricity used in occupied and vacant apartments. The Missouri Supreme Court held "The plain and ordinary meaning of the 1986 amendment to section 144.030.2(23) is clear and unambiguous: purchased metered

electricity sold under a residential tariff is considered as a sale made for domestic use and is exempt from sales tax." The court also held the exemption is not limited to natural persons and applies without regard to who made the purchase.

12 CSR 10-3.186 Water Haulers
(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-87 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.188 Telephone Service

PURPOSE: This rule interprets the sales tax law as it applies to telephone service and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Telephone companies are subject to sales tax on the basic rate paid by telephone subscribers for the act or privilege of originating or receiving intrastate messages and conversations in this state, whether local or long distance, and are subject to sales tax on amounts paid for all services and equipment provided in connection with telephone service.

(A) The sales tax rate for noncellular telephone service is based upon the service address. Service address means, except as in subsections (1)(B)–(D), the location of the telephone equipment from which the noncellular telephone service originates.

(B) The sales tax rate for noncellular intrastate collect calls is based upon the service address which is billed for the call.

(C) Intrastate credit card calls are taxable and will be taxed according to the service address from which the telephone service originates.

(D) Due to the fact that current technology does not allow a taxpayer to determine the service address for cellular telephone service, including mobile car phones, maritime systems, air-to-ground systems and the like, the sales tax rate shall be determined by the billing address of the customer billed for the call as defined by telephone number, authorization code or location in Missouri where bills are sent. Cellular telephone service, both incoming and outgoing, consists of the service between the cellular telephone, the cell sites and the mobile telephone switching

office (MTSO) (see section (12) for taxation of roamer cellular telephone service charges).

(E) Example: An individual from Texas places a call from the Kansas City, Missouri airport to St. Louis, Missouri and charges the call to a credit card with a billing address in Texas. The caller should be billed Missouri sales tax at the rate in effect at Kansas City, Missouri.

(F) Example: A cellular telephone customer with a billing address in Kansas City, Missouri places a call to St. Louis, Missouri from a cellular telephone located in his/her automobile while driving in Kansas City, Missouri. The charges for cellular telephone services are subject to sales tax based upon the billing address of the customer in Kansas City, Missouri. All other telephone service charges (noncellular) are based upon the general service address rules set forth here. This applies regardless of whether the call is placed with or without a credit card. However, if the call is placed as a collect call to a St. Louis, Missouri location, then the non-cellular telephone service charges are subject to sales tax at the rate in effect at the billing address of the receiver.

(2) Sales tax applies to all charges for minimum monthly service, service connections and disconnections, tariff telephone directory listings, equipment such as telephones, computer modems, deaf set extensions, special speakers and any other equipment furnished in conjunction with furnishing or enhancing telephone service. The applicable tax rate will be determined by the location of the equipment. Example: John Doe is charged six dollars and ninety cents (\$6.90) per month for his home telephone service. The six dollars and ninety cents (\$6.90) consists of six dollars (\$6) for line charges, fifty cents (50¢) for the telephone monthly service charge and forty cents (40¢) for federal excise tax. Sales tax would be due on the six dollars (\$6) and the fifty-cent (50¢) charge for the telephone. The tax rate would be based on where the telephone is located.

(3) The sale of tangible personal property, such as a telephone, shall be treated as a retail sale and the tax rate applicable will be based on the business location of the seller. Example: The Expo Telephone Company operates a telephone sales and service office which sells telephones to the public on a retail basis. The company should charge tax at the time a sale is made based upon the location of the store. The rental of tangible personal property, when billed separately from telecommunication service, shall be

treated as all other rentals for purposes of sales tax (see 12 CSR 10-3.226).

(4) Sales tax applies to customer access charges billed to the user of any telephone line, whether the line is used for intrastate or interstate messages. These access charges include user access line charges for WATS lines, residential and business user access charges and access charges for the use of long distance services. Provided, however, sales of access or similar service to telecommunications companies which will be used to provide telecommunications service are not subject to tax and are considered to be for resale.

(A) Example: A one dollar (\$1) access charge is added to each customer's bill every month. This represents a federally mandated charge for the interstate telephone network. The one dollar (\$1) would be subject to tax based on the location of the telephone.

(B) Example: XYZ Long Distance Company charges its subscribers two dollars (\$2) per month to access their interstate telephone lines. The two dollars (\$2) would be subject to sales tax based on the rate where the telephone is located.

(C) Example: Doe Company pays fifty dollars (\$50) per month in end user access line charge for a WATS line. If the charge is for a WATS line accessed through telephone equipment located in Missouri, it would be subject to tax based upon the location of the telephone equipment used by the subscriber to access the WATS line.

(5) Receipts of telephone companies for telephone transmissions made through public pay telephones are not subject to sales tax. Receipts for telephone transmission made through semipublic pay telephones are subject to the sales tax. For purposes of this section, public pay telephones and semipublic pay telephones shall mean—

(A) Public pay telephones refer to an exchange station installed at the telephone company's option, in charge of an attendant, or equipped with a coin collection or other billing device at a location chosen by the telephone company as suitable and necessary for furnishing service to the general public and for this telephone no listing in a phone directory is generally allowed. Telephone company includes any telecommunications company authorized by the Missouri Public Service Commission to provide pay telephone service in Missouri;

(B) Semipublic telephone shall mean and refer to a business subscriber station, equipped with a coin collection device, designed for a combination of subscriber and public usage, which telephone is located

where it may be collectively used by guests, members, employees, boarders, students or other occupants, as well as the subscriber, and for which the subscriber is entitled to a directory listing for purposes of incoming calls and business purposes. The definition of semipublic telephones in this rule also includes customer-owned coin telephones at locations accessible to the public, irrespective of whether or not the coin-operated telephone is designed for use by the subscriber. A customer-owned coin telephone is a phone owned by a person other than a telecommunication company authorized by the Missouri Public Service Commission to provide pay telephone service in Missouri; and

(C) The price charged for a telephone call shall be considered to be inclusive of the applicable sales tax which shall be calculated using the sales tax rate in effect for the location of the pay telephone. Due to the method of payment for pay telephone service, it is not necessary that the amount of sales tax be stated separately and it is not necessary that a notice be placed on telephones which advises users that sales tax is included in the rate. Telephone companies may apply to the director of revenue for permission to use a special accounting method to compute the amount of sales tax due based upon statistical sampling.

(6) Sales tax shall apply to the basic rate charged including any advance or equalized payment, surcharge, minimum or flat rate. Any franchise, occupation, sales, license, excise, privilege or similar tax of any kind, which is not a part of the basic rate is not subject to the sales tax. This does not exclude access charges from taxation.

(7) All intrastate telephone service is taxable. Intrastate cellular telephone service for origination or termination of a call is subject to Missouri sales tax whether or not the call is subsequently transmitted instate or out-of-state by a separate seller of telephone service. An interstate call shall be considered any transmission originating within this state and destined to a point outside of Missouri or any transmission originating outside of this state and terminating at a location within this state whether the service is provided by a single seller or by two (2) sellers participating in the transmission of the call. When a customer is billed for intrastate and interstate calls as a lump sum, and charges for each are not readily ascertainable, the entire amount of the charge is subject to the sales tax.

(A) Example: Ms. Doe receives a bill for toll calls covering the month of January. The bill is for forty dollars (\$40) and does not segregate interstate and intrastate calls. The

entire forty dollars (\$40) would be subject to sales tax.

(B) Example: A cellular telephone customer with a Kansas City, Missouri billing address places a call to Denver, Colorado from a cellular telephone located in his/her automobile while driving in Kansas City, Missouri. The portion of the call relating to separately billed cellular telephone service to transmit the call from the automobile through the transmitting cell sites in the Kansas City area and then to the MTSO in Kansas City, Missouri is subject to sales tax based upon the billing address of the cellular telephone service customer. The interstate portion of the call relating to telephone service from the MTSO over land lines to the Denver, Colorado destination point is not subject to sales tax. If the intrastate and interstate portions are not separately stated to the customer and are not otherwise ascertainable, the entire charge is taxable.

(8) Receipts derived from charges for tariff telephone directory listings are subject to sales tax if a separate charge is made for the listing. Example: Company B which is located in Warrensburg places its name in the Jefferson City directory and is billed six dollars (\$6) for this service. The six dollar-(\$6) charge would be subject to sales tax in its entirety. The tax rate applicable will be based on the domicile of the subscriber.

(9) In situations where telegrams are billed through a telephone subscriber's account, these charges are subject to sales tax and are to be included in the measure of tax by the telegraph company. The tax rate applicable will be based on the service address for non-cellular telephone service and will be based on the billing address of the subscriber as defined by telephone number, authorization code or location in Missouri where bills are sent for cellular telephone service.

(10) A subscriber of telephone service is any individual, business, corporation or other entity who uses, or maintains for use, equipment necessary to transmit information over telephone lines. Telephone lines refer to any means of transmitting telephone messages, including, but not limited to, wire, radio transmission, microwave and optic fiber technology.

(11) Telephone service applies to the service ordinarily and popularly ascribed to it including, without limitation, the transmission of messages and conversations through use of local, toll and wide area telephone service;

private line services; land line services; cellular telephone services; and maritime and air-to-ground telephone service. Telephone service includes the transmission of information over telephone lines and other telephonic media for facsimile transfers. Telephone service does not include value-added services including computer processing applications used to act on the form, content, code and protocol of the information for purposes other than transmission.

(12) Notwithstanding any other provisions of this rule, roamer cellular telephone service charges are subject to sales tax as follows: A cellular telephone company providing roamer cellular telephone service to the customer of a different cellular telephone company shall collect and remit sales tax based on the location of the MTSO that receives and transmits the cellular telephone signals. The sales tax shall apply to all roamer cellular telephone service provided in Missouri.

(A) Example: A cellular telephone customer/subscriber of a Denver, Colorado cellular telephone company places a cellular telephone call from his/her automobile while driving in St. Louis, Missouri. The call is received and transmitted by the MTSO of a St. Louis, Missouri cellular telephone company. The MTSO is located in St. Louis, Missouri. The St. Louis cellular telephone company bills the Denver, Colorado cellular telephone company for the call, which in turn bills the Denver customer/subscriber. The St. Louis cellular telephone company shall collect and remit sales tax on the amounts billed to the Denver, Colorado cellular telephone company based upon the location of the MTSO in St. Louis.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 57 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-87A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed April 2, 1985, effective July 1, 1986. Amended: Filed Jan. 5, 1987, effective April 11, 1987. Amended: Filed July 20, 1987, effective Oct. 25, 1987. Emergency amendment filed Feb. 11, 1991, effective Feb. 21, 1991, expired June 20, 1991. Emergency amendment filed June 11, 1991, effective June 21, 1991, expired Oct. 9, 1991. Amended: Filed Feb. 11, 1991, effective Sept. 30, 1991. Amended: Filed Dec. 2, 1992, effective Aug. 9, 1993.*

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

Mobile Radio Communications, Inc. v. Director of Revenue, Case No. RS-79-0199 (A.H.C. 12/16/82). The commission held that mobile radio service does not constitute taxable "Service to telephone subscribers and to others through equipment of telephone subscribers" under section 144.202.1(4), RSMo. The commission interprets that language to mean that the purchaser must be receiving telephone service through telephone equipment. Radio service is not telephone service. Furthermore, according to the commission, the telephone land lines petitioner used were private circuits used solely in connection with the petitioner's transmission of signals and were not connected or otherwise tied into Southwestern Bell's telephone system. Additionally, the court held that petitioner was not liable for sales tax on the receipts from the rental of pagers and mobile radios, because petitioner had purchased the pagers and mobile radios under the conditions of sales at retail and paid tax on them pursuant to section 144.020.1(8), RSMo.

12 CSR 10-3.192 Seller's Responsibilities

PURPOSE: This rule provides guidelines for the seller's responsibilities and interprets and applies sections 144.010, 144.021, 144.080 and 144.210, RSMo.

(1) The burden of proving that a sale of tangible personal property or taxable services was made for resale and not retail shall be upon the seller. The burden of proving that a retail sale of tangible personal property or taxable services was exempt under the sales tax law shall be upon the person claiming the exemption. The seller is required to secure and retain a signed exemption certificate from the purchaser as evidence that the sale is made for resale or otherwise exempted from the sales tax. Acquiring only the Missouri sales tax license number of a letter stating the purchaser will be responsible for the tax is not sufficient proof by itself that the sale is exempt.

(2) When the Department of Revenue has reason to believe the seller acted not in good faith in the acceptance of an exemption certificate, the department is empowered to make an additional assessment of tax due from the seller. When the seller has been determined to have acted not in good faith, both seller and purchaser will be held liable until all liabilities have been satisfied.

(3) The seller must indicate on each invoice or bill of sale the name of each purchaser

from whom an exemption certificate has been secured or be subject to the sales tax upon the sale.

(4) Exemption certificates must be available at the establishment of the seller for ready inspection and comparison with the deductions claimed. A seller, duly registered under the provisions of the Sales Tax Act and continually engaged in the business of selling tangible personal property or taxable services at retail, must present an exemption certificate to his/her wholesaler or supplier as to his/her registration as a retailer. The purchaser shall not be required to execute additional certificates of resale for individual purchases as long as there is no change in the character of his/her operation and the purchases are of tangible personal property or taxable services of a sort usually purchased by him/her for resale.

(5) A seller who accepts, in good faith, a signed exemption certificate from the purchaser as authorized under this rule is relieved of all liability on account of any erroneous claim of exemption and the purchaser or other person claiming exemption will be solely responsible for all taxes, interest and penalty due.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 86 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-89 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

P.F.D. Supply Corporation v. Director of Revenue, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and non-reusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The commissioner, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.

Relying on its previous decision in Blue-side Co. v. Director of Revenue, Case No.

RS-82-4625 (A.H.C. 10/5/84), the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to *Blueside*, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in *Overland Steel, Inc. v. Director of Revenue*, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, Art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the *Overland Steel* case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2) in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.

Finally, the commission held that non-reusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on such items.

12 CSR 10-3.194 Multistate Statutes

PURPOSE: This rule provides that the Multistate Tax Compact relating to sales and use taxes is applicable in Missouri, and interprets and applies section 32.200, RSMo.

(1) The provisions of the Multistate Tax Compact section 32.200, RSMo applicable to sales and use taxes are fully applicable in Missouri.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 010-90 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

P.F.D. Supply Corporation v. Director of Revenue, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The commissioner, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.

Relying on its previous decision in *Blueside Co. v. Director of Revenue*, Case No. RS-82-4625 (A.H.C. 10/5/84), the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to *Blueside*, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the "user" and the sale to that restaurant was a taxable retail sale.

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in *Overland Steel, Inc. v. Director of Revenue*, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section

32.200, Art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the *Overland Steel* case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2), in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.

Finally, the commission held that non-reusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on such items.

12 CSR 10-3.196 Nonreturnable Containers

PURPOSE: This rule interprets the sales tax law as it applies to nonreturnable containers and interprets and applies section 144.011(9), RSMo.

(1) Sales of nonreturnable containers to persons who use them to package tangible personal property so that the containers become part of the products ultimately sold are sales for resale. The buyer of this type of container may give a sale for resale exemption certificate for the containers which s/he purchases. Thus, a seller, who sells nonreturnable containers to a person who has delivered a sale for resale certificate and uses the containers in packaging goods which are then sold to consumers may deduct the receipts from his/her sales.

(2) Example: The sale of disposable bottles to a bottler for use in bottling beverages is a sale for resale and is not subject to the sales tax.

(3) Also, a retail sale does not encompass the purchase, by persons operating eating or food service establishments, of items of a non-reusable nature which are furnished to the customers of those establishments with or in conjunction with the retail sales of their food or beverage. This exemption includes, but is not limited to, wrapping or packaging materials and nonreusable paper, wood, plastic and aluminum articles such as containers,

trays, napkins, dishes, silverware, cups, bags, boxes, straws, sticks and toothpicks.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 34. S.T. regulation 011-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

Smith Beverage Co. of Columbia, v. Reiss, 568 SW2d 61 (Mo. banc 1978). Bottlers were not required to pay a use tax on reusable soft drink bottles purchased from outstate suppliers and transferred to retailers for sale to consumers, since these transactions fall within the purchase for resale exemption.

King v. National Super Markets, Inc., 653 SW2d 220 (Mo. banc 1983). The purchase of paper bags by a supermarket was considered to be a purchase for resale because they are transferred to the supermarket's customers for consideration, since customers pay an increased price in exchange for the quantity of bags required to bag their purchases. Since **National** was including the cost of the bags as part of the gross taxable sale, the purpose of the use tax would not be achieved by allowing its imposition in this case.

12 CSR 10-3.198 Returnable Containers

PURPOSE: This rule interprets the sales tax law as it applies to returnable containers and interprets and applies sections 144.010 and 144.011(9), RSMo.

(1) No sales tax is due on the sale of reusable containers for which a deposit is required and refunded on return. The term encompasses returnable bottles for beverages and returnable soft drink bottle cases.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 34. S.T. regulation 011-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

Smith Beverage Co. of Columbia, Inc. v. A. Gerald Reiss, 568 SW2d 61 (Mo. banc 1978). Bottlers were not required to pay a use tax on reusable soft drink bottles purchased from outstate suppliers and transferred to

retailers for sale to consumers, since these transactions fall within the purchase for resale exemption.

12 CSR 10-3.200 Wrapping Materials (Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Oct. 15, 1985, effective Jan. 26, 1986. Amended: Filed July 14, 1986, effective Nov. 28, 1986. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

Rival Manufacturing Co. v. Director of Revenue, Case No. RS-81-0522 (A.H.C. 6/4/83). The issue in this case was the imposition of sales and use tax on shippers (boxes to ship multiple items) which taxpayer used to send crock pots to its customers. The controlling issue in this case was whether or not the shippers were purchased by the petitioner at retail (for its own use and consumption) or purchased for resale (to be sold to its customers). If they were purchased for resale, they were exempt from taxation. The commission cited the three-part test of **Smith Beverage Co. v. Reiss**, 568 SW2d 61 (Mo. banc 1978) for determining if purchases were for resale. The three parts of that test are: 1) a transfer, barter or exchange of title; 2) of tangible personal property; 3) for consideration.

The Department argued that the third part of the test had not been met because consideration must be bargained for. They were part of petitioner's overhead and they were optional. The purchasers did not bargain for the shippers because it did not bargain for a particular mode of shipment. The commission found that the cost of the shippers was part of the selling price of the items purchased. They were transferred for a consideration. The court concluded that the shippers were exempt from tax because they were not purchased at retail, but were purchased for resale.

King v. National Super Markets, Inc., 653 SW2d 220 (Mo. banc 1983). The purchase of paper bags by a supermarket was considered to be a purchase for resale because they are transferred to the supermarket's customers for consideration, since customers pay an increased price in exchange for the quantity of bags required to bag their purchases. Since **National** was including the cost of the bags as part of the gross taxable sale, the purpose of

the use tax would not be achieved by allowing its imposition in this case.

12 CSR 10-3.202 Pallets (Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-4 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

Floyd Charcoal Co. v. Director of Revenue, 599 SW2d 173 (1980). Appellant charcoal company purchased pallets upon which charcoal packages were loaded for sale to its customers and claimed an exemption from the payment of sales tax on its initial purchase of the pallets as being purchases for resale to its customers. The assessment of sales tax was upheld since the charcoal company maintained the practice of crediting the customer's next purchase for each pallet returned to it.

Kaiser Aluminum & Chemical Corp. v. Director of Revenue, Case No. RS-82-0068 (A.H.C. 10/28/83). The issues in this case were the taxability of the purchase and subsequent transfer of certain pallets which petitioner used to stack its bricks upon as they were transferred to customers. The commission based its conclusions of law upon a factual finding that the pallets were indeed sold to its customers. Because the pallets were sold to petitioner's customers, the resale exemption certificates which the petitioner presented at the time it purchased the pallets in question were valid. In reaching this conclusion, the commission held that the statutory definition accorded the word sale was applicable to the term resale as well, reasoning by analogy from the decision in **Smith Beverage Co. v. Reiss**, 568 SW2d 61 (Mo. banc 1978). In making its factual finding the commission noted that while the petitioner's customers could have returned the pallets for a deposit they were under no obligation to do so, and additionally, that for accounting purposes the transfer of pallets was treated as sales.

The other issue addressed in the case was whether or not the sale of the pallets constituted sales at retail which would be subject to sales tax. Petitioner contended that its subsequent sale of the pallets was exempt because they constituted reusable containers. The commission upheld 12 CSR 10-3.020(2) which provides that pallets are not exempt. The commission pointed to the language in

section 144.011.1, RSMo which requires that the containers be sold with “tangible personal property contained therein.” Because goods are not contained in pallets the commission held that they did not constitute containers and were nonexempt.

12 CSR 10-3.204 Paper Towels, Sales Slips

PURPOSE: This rule interprets the sales tax law as it applies to sales of paper towels, sales slips and like items, and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Sales of paper towels, toilet tissues, sales slips and similar items to businesses are subject to sales tax unless resold.

(2) Example 1: The Book and Stationery Store is engaged in the business of selling office supplies. Among the items which it carries for sale to other merchants are sales slips. B & S purchases the sales slips from Y Company. Y Company will be allowed to treat the sale of slips to B & S as sales for resale if it has received a sale for resale exemption certificate. The sales slips which B & S sells to its customers are subject to sales tax.

(3) Example 2: B & S uses some of the sales slips which it purchases to record transactions between itself and its customers and to bill the customers. B & S must pay sales tax on these sales slips which it uses or consumes.

(4) Example 3: The Fast Food Burger Bar purchases paper towels and toilet tissue for its public restroom. Fast Food must pay sales tax on these items at the time of purchase.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 011-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.206 Bottle Caps and Crowns (Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-6 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980,

effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

Smith Beverage Co. v. Reiss, 568 SW2d 61 (Mo. banc 1978). Bottlers were not required to pay a use tax on reusable soft drink bottles purchased from outstate suppliers and transferred to retailers for sale to consumers, since these transactions fall within the purchase for resale exemption.

12 CSR 10-3.208 Crates and Cartons (Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-7 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

Floyd Charcoal Co. v. Director of Revenue, 599 SW2d 173 (Mo. banc 1980). Appellant charcoal company purchased pallets upon which charcoal packages were loaded for sale to its customers and claimed an exemption from the payment of sales tax on its initial purchase of the pallets as being purchases for resale to its customers. The assessment of sales tax was upheld since the charcoal company maintained the practice of crediting the customer's next purchase for each pallet returned to it.

12 CSR 10-3.210 Seller Must Charge Correct Rate (Rescinded February 28, 2001)

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 020-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Aug. 24, 2000, effective Feb. 28, 2001.

12 CSR 10-3.212 Rooms, Meals and Drinks (Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 50 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 020-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.214 Complimentary Rooms, Meals and Drinks (Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.216 Permanent Resident Defined (Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

National Land Management, Inc., v. Director of Revenue, Case No. RS-81-0639 (A.H.C. 6/6/84). The issue in this case was whether time sharing arrangements at resorts are subject to sales tax. The commission initially found that the receipts in question were not taxable pursuant to section 144.020.1(2), which provides for imposition of tax on—a) sums paid for admission to places of amusement, b) sums paid for seating accommodations therein and c) all fees paid to or in place of amusement.

Regarding the first provision, the commission found that the sums in question were not paid for admission as that term is commonly understood. The commission also found that accommodations were not the subject for which the sums were paid. With respect to the third provision, the commission found that the assessments did not apply to any separate fees charged for the use of petitioner's amenities but were based on charges for the time share occupancies.

Next, the commission found that section 144.020.1(6) was inapplicable, because the payments in question did not constitute charges for rooms furnished in any hotel, motel, inn, tourist camp or tourist cabin. Arriving at this conclusion the commission held, “If the relationship is that of innkeeper and guest, then petitioner is providing a taxable service; if not, then petitioner's time share activities are not taxable under section 144.020.1.”

Looking at the law from various states, the commission held that the agreements in question constituted vacation leases creating an assignable interest in real property. Because of the thirty-year lease, the occupants are not

transitory in the sense that travelers or tourists are. Rooms in petitioner's resort are not regularly rented because they are only open to the general public when they are not already reserved pursuant to one of the previously mentioned agreements. Thus, the director of revenue failed to meet his burden of proof by establishing that the agreements in question constituted taxable service in the form of a room furnished at a hotel, motel, tourist camp or tourist cabin by an innkeeper.

12 CSR 10-3.218 Students
(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule nos. 5 and 50 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 020-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.220 Sales of Accommodations to Exempt Organizations
(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-6 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.222 Transportation Fares

PURPOSE: This rule interprets the sales tax law as it applies to transportation fares and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Receipts derived from the intrastate transportation of persons for hire by persons operating buses and trucks licensed by the Missouri Public Service Commission are subject to tax. Also taxed are the receipts from the intrastate transportation of persons for hire by persons operating a railroad, sleeping car, dining car, express car or boat. Receipts derived from the intrastate transportation of persons for hire in air commerce, however, are not subject to sales tax.

(2) Taxi cabs, limousine services and local buses are not subject to tax.

(3) If a passenger is engaged in an interstate trip and purchases transportation between two

(2) points in this state, the separate charges for this intrastate journey are subject to the sales tax. Lump sum charges of special charter means of conveyance are subject to the sales tax in the same manner as their individual fares.

(4) Purchases by persons on state or federal expense accounts where each respective government is directly responsible for the payment of the tickets are not subject to the sales tax only when paid for by a governmental draft.

(5) Persons selling meals, drinks, cigarettes, magazines, toiletries and other articles of tangible personal property to persons on intrastate or interstate trips are subject to the sales tax on the gross receipts from all sales in this state. Carriers operating facilities which sell tangible personal property or render taxable services, such as eating and sleeping facilities, are subject to the sales tax on the gross receipts from the sales in this state.

*AUTHORITY: section 144.270, RSMo 1994. * This rule was previously filed as rule no. 58 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 020-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Dec. 30, 1983, effective April 12, 1984.*

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

Aloha Airlines v. Director of Taxation of Hawaii, 104 S.Ct. 291 (1983). 49 U.S.C. section 1513(a) preempts state statutes and expressly prohibits states from taxing directly or indirectly gross receipts derived from interstate air transportation.

12 CSR 10-3.224 Effective Date of Option
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 020-8 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

Op. Atty. Gen. No. 71, Buechner (4-8-77). A corporation involved in the rental and leasing of motor vehicles may elect either to pay sales tax at the time it receives the gross receipts from the rental or lease agreements or at the time of registration of motor vehicles. However, either election must include all motor vehicles held for rental or lease and a corporation with separately managed divisions may not elect to have one division pay Missouri

sales tax at the time the vehicles are purchased and another division pay sales tax as rental proceeds are received from its customers.

12 CSR 10-3.226 Lease or Rental

PURPOSE: This rule interprets the sales tax law as it applies to lease or rental receipts and interprets and applies sections 144.020 and 144.070, RSMo.

(1) The gross receipts from the sale of tangible personal property which are exempt from the sales or use tax on the sale of the property are similarly exempt from the sales tax on the total gross receipts from any lease or rental of the property. The gross receipts derived from a lease or rental of motor vehicles or trailers leased or rented by an authorized motor vehicle leasing company are subject to the sales tax. The gross receipts derived from a lease or rental of other tangible personal property upon which Missouri sales tax was not paid at the time of purchase are also subject to sales tax.

*AUTHORITY: section 144.270, RSMo 1994. * S.T. regulation 020-9 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 14, 1976, effective Dec. 11, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

Op. Atty. Gen. No. 71, Buechner (4-8-77). A corporation involved in the rental and leasing of motor vehicles may elect either to pay sales tax at the time it receives the gross receipts from the rental or lease agreements or at the time of registration of motor vehicles. However, either election must include all motor vehicles held for rental or lease and a corporation with separately managed divisions may not elect to have one division pay Missouri sales tax at the time the vehicles are purchased and another division pay sales tax as rental proceeds are received from its customers.

Hal Aviation, Inc. v. Director of Revenue, Case No. RS-79-0310 (A.H.C. 1/20/83). Taxpayer purchased airplanes pursuant to a resale exemption certificate thereby escaping the payment of sales tax on the purchase. Taxpayer then used some of the planes in the operation of a flight school prior to selling them. A sales tax assessment was issued against the taxpayer based upon the theory that the use of the planes by the taxpayer

should be taxed pursuant to section 144.020.1(8), RSMo as a rental to the flying students. The court held that the use of these planes by the flying students was no more a rental than the use of classrooms by other types of students. The students paid valuable consideration for a service, the flying lessons, and not for the rental of the planes. Additionally, the court found that the department could not impose a tax on the theory that taxpayer evaded sales tax by the improper use of resale exemption certificates because this was not the basis of the audit and it went beyond the scope of the complaint and the answer. Note, that since the lease of the airplanes by students does not constitute a rental, sales or use tax would be owed to the state of Missouri on the original purchase of the plane.

12 CSR 10-3.228 Lessors-Renters Include

PURPOSE: This rule indicates that a person may be a lessor or renter even though the location of the leased or rented article remains unchanged and interprets and applies sections 144.010 and 144.020, RSMo.

(1) Lessors and renters include those persons whose tangible personal property remains on their own premises, but which is operated by the lessee or is under the direct control of the lessee for a specified period of time.

AUTHORITY: section 144.270, RSMo 1994. * S.T. regulation 020-10 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 14, 1976, effective Dec. 11, 1976.

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

12 CSR 10-3.230 Repair Parts for Leased or Rented Equipment

PURPOSE: This rule interprets the sales tax law as it applies to parts used in the repair of leased or rented equipment and interprets and applies sections 144.010 and 144.020, RSMo.

(1) Sellers of repair or replacement parts for use in repairing tangible personal property which is rented or leased are subject to the sales tax unless the lessor/renter provides the seller with a properly executed exemption certificate. In order to purchase repair or replacement parts tax exempt under an exemption certificate, the following requirements must be met:

(A) Tax must not have been paid on the property to be repaired at the time of purchase. An exception is motor vehicles or trailers leased or rented by an authorized motor vehicle leasing company which also paid sales tax on the vehicles when they were purchased;

(B) The repair or replacement of the property must be performed at no additional cost to the lessee of the property under the lease agreement; and

(C) The lessor must not use the property or parts in any manner other than holding them for the repair of or for replacement on leased or rental property or for resale.

AUTHORITY: section 144.270, RSMo 1994. * S.T. regulation 020-11 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.232 Maintenance Charges for Leased or Rented Equipment

PURPOSE: This rule interprets the sales tax law as it applies to maintenance charges for leased or rented equipment and interprets and applies sections 144.010 and 144.020, RSMo.

(1) When maintenance or repair charges or other incidental charges are included in a lease or rental contract, all charges are considered gross receipts.

(A) Example: L Corporation leases copy machines to various customers. As part of the lease agreement, L Corporation agrees to perform all maintenance and repair upon the copy machines. All of the gross receipts are subject to sales tax and no deduction is allowed for the maintenance agreement (also see 12 CSR 10-3.064).

(B) Example: J Corporation leases and ships equipment to persons in various areas of Missouri, separately stating the lease charge and the transportation charges. J Corporation is subject to sales tax on the lease price of the goods, including the transportation charges, as they were incurred prior to transfer of possession to the customer.

AUTHORITY: section 144.270, RSMo 1994. * S.T. regulation 020-12 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

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

12 CSR 10-3.233 Export Sales (Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

Kaiser Aluminum & Chemical Sales v. Director of Revenue, Case No. RS-82-0303 (A.H.C. 10/28/83). The issue in this case was whether or not certain bricks shipped from a Missouri plant were subject to Missouri sales tax. It was necessary for the commission to determine where the sale took place. When no specific provision for the passage of title is contained in the agreement between the parties, the commission must look to other evidence such as industry practice, passage of risk of loss, party paying transportation costs and method and time of payment. The commission cited **Kurtz Concrete, Inc. v. Spradling**, 560 SW2d 858 (Mo. banc 1978) and **Frontier Bag, Inc. v. Director of Revenue**, Case No. R-80-0073 (A.H.C. 11/12/81). Finding that the goods were shipped F.O.B. from Mexico, Missouri, the commission held that petitioner manifested an intent to have title pass to the buyer at the time and place of shipment. The commissioner looked to section 400.2-401(2)(a), RSMo (1978) (Uniform Commercial Code) in reaching this conclusion. Therefore, the sale did take place in Missouri and tax was applicable.

12 CSR 10-3.234 Permit Required (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 020-13 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug 13, 1980, effective Dec. 11, 1980.

Op. Atty. Gen. No. 71, Buechner (4-8-77). A corporation involved in the rental and leasing of motor vehicles may elect either to pay sales tax at the time it receives the gross receipts from the rental or lease agreements or at the time of registration of motor vehicles. However, either election must include all motor vehicles held for rental or lease and a corporation with separately managed divisions may not elect to have one division pay Missouri sales tax at the time the vehicles are purchased and another division pay sales tax as rental proceeds are received from its customers.

**12 CSR 10-3.236 Domicile of Motor Vehicles**

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 020-14 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.238 Leasing Motor Vehicles for Release

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 020-15 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 1, 1980.

12 CSR 10-3.240 Meal Tickets

(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-16 was last filed as rule no. 11 Jan. 22, 1973, effective Feb. 1, 1973. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

12 CSR 10-3.242 Gross Sales Reporting Method

(Rescinded March 14, 1991)

AUTHORITY: section 144.270, RSMo 1986. S.T. regulation 021-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Oct. 24, 1990, effective March 4, 1991.

12 CSR 10-3.244 Trade-Ins

(Rescinded September 30, 2001)

AUTHORITY: sections 144.025 and 144.270, RSMo 1994. This rule was previously filed as rule no. 36 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 025-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Feb. 3, 1984, effective May 11, 1984. Amended: Filed Nov. 28, 1994, effective May 28, 1995. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.245 Exempt Federal, State Agency or Missouri Political Subdivision—General Requirements

(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 15, 1984, effective Feb. 11, 1985. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

The Public School Retirement System of the City of St. Louis v. Director of Revenue, Case No. RS-80-0125 (A.H.C. 2/8/84). The issue in this case was whether The Public School Retirement System of the City of St. Louis is exempt from sales tax as a public elementary or secondary school, a not-for-profit civic or charitable organization or a constitutionally tax-exempt political subdivision. The commission first noted that an agreement existed between the taxpayer and the Internal Revenue Service, whereby the Retirement System did not constitute a tax-exempt 501(c)(11) Teachers Retirement Fund, because it had more than an incidental number of nonteacher participants and a large amount of funding from gifts, devises, bequests and legacies, which was inconsistent with the provisions of Section 501(c)(11) of the **Internal Revenue Code**. The commission found that the taxpayer was not exempt under section 144.030.2(19), RSMo as a public elementary or secondary school, because it was specifically created by the general assembly as a body corporate, separate and distinct from the public schools of the City of St. Louis. The commission found that the taxpayer was not exempt under section 144.030.2(20), RSMo as a civic or charitable organization because, like the hospital at issue in *Frisco Employees' Hospital Assn. v. State Tax Comm.*, 381 SW2d 772 (Mo. banc 1964), it only provided benefits to its members. Finally, the commission found that collecting sales tax on purchases made by the Retirement System did not constitute the imposition of tax on property paid for out of the funds of a county or other political subdivision in violation of Mo. Const. Art. III, section 39(10) because the taxpayer was not a county or political subdivision. The commission rejected the taxpayer's argument that the funds which it received from the political subdivisions retained their character when they were used by the Retirement System to make purchases. Pointing out that the Retirement System is separate and independent from the St. Louis School District and that it receives funds from many sources other than the School District, the commission found that the funds in question had lost their character and ceased to be funds of a political subdivision.

12 CSR 10-3.246 General Examples

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule No. 36 Jan. 22, 1993, effective Feb. 1, 1973. S.T. regulation 025-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.247 Information Required to be Filed by a Federal, State Agency or Missouri Political Subdivision Claiming Exemption

(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 15, 1984, effective Feb. 11, 1985. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

The Public School Retirement System of the City of St. Louis v. Director of Revenue, Case No. RS-80-0125 (A.H.C. 2/8/84). The issue in this case was whether The Public School Retirement System of the City of St. Louis is exempt from sales tax as a public elementary or secondary school, a not-for-profit civic or charitable organization or a constitutionally tax-exempt political subdivision. The commission first noted that an agreement existed between the taxpayer and the **Internal Revenue Service**, whereby the Retirement System did not constitute a tax-exempt 501(c)(11) Teachers Retirement Fund, because it had more than an incidental number of nonteacher participants and a large amount of funding from gifts, devises, bequests and legacies, which was inconsistent with the provisions of section 501(c)(11) of the **Internal Revenue Code**. The commission found that the taxpayer was not exempt under section 144.030.2(19), RSMo as a public elementary or secondary school, because it was specifically created by the general assembly as a body corporate, separate and distinct from the public schools of the City of St. Louis. The commission found that the taxpayer was not exempt under section 144.030.2(20), RSMo as a civic or charitable organization because, like the hospital at issue in *Frisco Employees' Hospital Assn. v. State Tax Comm.*, 381 SW2d 772 (Mo. banc 1964), it only provided benefits to its members. Finally, the commission found that collecting sales tax on purchases made by the Retirement System did not constitute the imposition of tax on property paid for out of the funds of a county or other political subdivision in violation of Mo. Const. Art. III, section 39(10) because the taxpayer was not a county or political subdivision. The commission rejected the taxpayer's argument that the

funds which it received from the political subdivisions retained their character when they were used by the Retirement System to make purchases. Pointing out that the Retirement System is separate and independent from the St. Louis School District and that it receives funds from many sources other than the School District, the commission found that the funds in question had lost their character and ceased to be funds of a political subdivision.

12 CSR 10-3.248 Sales to the United States Government

(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 2 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed Feb. 23, 1989, effective June 11, 1989. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

State ex rel. Thompson-Stearns-Roger v. Schaffner, 489 SW2d 207 (1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission. Purchases by a contractor of materials and supplies in performance of cost-plus contracts with the United States government are subject to sales tax, although the contract provides that title to the property purchased shall vest in the United States upon its delivery to the building site.

United States v. New Mexico, 455 U.S. 720, 102 S.Ct. 1373 (1982). New Mexico's sales tax was not invalid as applied to purchases made by contractors having contracts with the federal government for construction and repair work on government-owned property, even where title passed directly from vendors to the federal government.

12 CSR 10-3.249 Sales to Foreign Diplomats

PURPOSE: This rule interprets the sales tax law as it pertains to sales tax exemptions to foreign diplomats and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Foreign diplomats qualifying for a sales tax exemption under the provision of a treaty or agreement existing between the United States or Missouri and their respective country will be required to file an Application for Diplomatic Exemption, Missouri Sales Tax. A copy of the treaty or agreement must accompany the application.

(2) Those persons qualifying for the sales tax exemption will be issued a Foreign Government Exemption Card. The card should be displayed to the seller or vendor when purchases are made and all sales tickets must be signed. When the foreign diplomat's term expires, the exemption card must be returned to the Department of Revenue.

AUTHORITY: section 144.270, RSMo 1994.* Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.

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

12 CSR 10-3.250 Sales to Missouri

(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 1 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

City of Springfield v. Director of Revenue, 659 SW2d 782 (Mo. banc 1983). The issue in this case was whether or not the director of revenue could legally assess sales tax on concession, admission and use fees charged by the city park board. The Supreme Court found first that Mo. Const. Art. III, section 39(10), which prohibits a tax upon the "use, purchase or acquisition of property paid for out of the funds" of the city did not prohibit the imposition of tax upon the fees in question. There was no tax on the use, purchase or acquisition of property paid for from city funds. Secondly, the court found that section 144.020.1(2), RSMo brought the sale of recreational activities and concessions within the purview of the sales tax statute. The operation of the park and its facilities and services

did constitute a business by a person making sales at retail and the park board did constitute a seller within the various definitions contained in section 144.010, RSMo.

12 CSR 10-3.252 Hunting and Fishing Licenses

PURPOSE: This rule interprets the sales tax law as it applies to hunting and fishing licenses.

(1) Sales of Missouri hunting and fishing licenses are not subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 030-2A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.

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

12 CSR 10-3.254 Sales to Missouri Political Subdivisions

(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 3 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

City of Springfield v. Director of Revenue, 659 SW2d 782 (Mo. banc 1983). The issue in this case was whether or not the director of revenue could legally assess sales tax on concession, admission and use fees charged by the city park board. The Supreme Court found first that Mo. Const. Art. III, section 39(10), which prohibits a tax upon the "use, purchase or acquisition of property paid for out of the funds" of the city did not prohibit the imposition of tax upon the fees in question. There was no tax on the use, purchase or acquisition of property paid for from city funds. Secondly, the court found that section 144.020.1(2), RSMo brought the sale of recreational activities and concessions within the purview of the sales tax statute. The operation of the park and its facilities and services did constitute a business by a person making sales at retail and the park board did constitute a seller within the various definitions contained in section 144.010, RSMo.

**12 CSR 10-3.256 Sales Other Than Missouri or its Political Subdivisions**

(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

12 CSR 10-3.258 Petty Cash Funds

(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-5 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

12 CSR 10-3.260 Nonappropriated Activities of Military Services

(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-6 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

State ex rel. Thompson-Stearns-Roger v. Schaffner, 489 SW2d 207 (1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.

United States v. New Mexico, 455 U.S. 720, 102 S.Ct. 1373 (1982). New Mexico's sales tax was not invalid as applied to purchases made by contractors having contracts with the federal government for construction and repair work on government-owned property, even where title passed directly from vendors to the federal government.

12 CSR 10-3.262 Government Suppliers and Contractors

(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 1 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

State ex rel. Thompson-Stearns-Roger v. Schaffner, 489 SW2d 207 (1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.

United States v. New Mexico, 455 U.S. 720, 102 S.Ct. 1373 (1982). New Mexico's sales tax was not invalid as applied to purchases made by contractors having contracts with the federal government for construction and repair work on government-owned property, even where title passed directly from vendors to the federal government.

Overland Steel, Inc. v. Director of Revenue, 647 SW2d 535 (Mo. banc 1983). There were two issues in this case. The first was whether a taxpayer could claim a sales tax exemption for certain steel if sold, on the grounds that the purchasers were to use it in pollution control or plant expansion projects. The second was whether or not the transfer of steel to certain customers in Kansas was a sale subject to sales tax under the Commerce Clause of the **United States Constitution**. With respect to the first issue, the court found that the taxpayer had the burden of establishing that it was exempt from sales tax, and its failure to produce sales tax exemption certificates, coupled with the dearth of testimony concerning the exempt activities of taxpayer, fails to meet that burden. With respect to the second issue, the court found that when property is purchased subject to a resale certificate, the purchaser becomes liable for sales tax if the property is not resold. In this case the court found that because the taxpayer used the steel in question in its capacity as a contractor there was no resale. Therefore, the taxable event was the taxpayer's original pur-

chase of the steel in Missouri. It was wholly irrelevant that the construction contract pursuant to which the steel was used was performed in Kansas. There was no violation of the Commerce Clause, and therefore, taxpayer was liable for tax.

Planned Systems Interiors, Ltd. v. Director of Revenue, Case No. RS-85-0065, (A.H.C. 7/1/86). The petitioner's theory was that it was making a sale to an agency of the United States government and could not be required to pay sales tax.

The Administrative Hearing Commission rejected petitioner's contentions and found that the taxpayer had a contractual relationship only as a subcontractor with K & S, the primary contractor and that the taxpayer sold the work stations to K & S pursuant to their contract. Under the department's regulations 12 CSR 10-3.028 and 12 CSR 10-3.262, this sale was subject to sales tax.

12 CSR 10-3.264 Repossessed Tangible Personal Property

PURPOSE: This rule interprets the sales tax law as it applies to sales of repossessed tangible personal property and interprets and applies section 144.010, RSMo.

(1) When banks, credit unions, savings and loan associations and other similar institutions acquire tangible personal property through repossession or foreclosure and where these properties are later sold by the creditors, the sales are subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. * This rule was previously filed as rule no. 38 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-8 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.266 Sales to National Banks and Other Financial Institutions

PURPOSE: This rule interprets the sales tax law as it applies to sales to national banks and other financial institutions and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Persons selling tangible personal property or taxable service to national banks, other

banks, credit unions or credit institutions and savings and loan associations, whether state or otherwise, are subject to the sales tax. Persons selling to federal reserve banks, federal land banks and federal credit unions are not subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 12 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-9 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

In Farm and Home Savings Association v. Spradling, 538 SW2d 313 (1976) the court held sales tax is a tax upon gross receipts of the seller, not the purchaser. Consequently, exemption provisions of the "tax in lieu of other taxes" statute did not exempt the association from payment of sales tax because it was the purchaser, not the seller. Had the legislature intended to exempt savings and loan associations as purchasers from use tax, it would have declared the intent in the act itself or specifically so provided in the exemption statute applicable to savings and loan associations.

12 CSR 10-3.268 General Rule (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-10 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.270 Carbon Dioxide Gas

PURPOSE: This rule interprets the sales tax law as it applies to sellers of carbon dioxide gas and interprets and applies sections 144.010 and 144.030.2(2), RSMo.

(1) Persons selling carbon dioxide gas to be used in producing carbonated water would not be subject to the sales tax since the gas becomes an ingredient or component part of the end product.

(2) Persons selling carbon dioxide gas to be used as a lifting agent for soft drinks or beer are subject to the sales tax since the gas does not become an ingredient or component part of the soft drink or beer.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-11 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.272 Motor Fuel and Other Fuels

PURPOSE: This rule interprets the sales tax law as it applies to sellers of motor fuels and other fuels, and interprets and applies sections 144.010, 144.030.2(1) and (2), RSMo.

(1) Persons selling motor fuel or special fuel in Missouri which is subject to a motor fuel or special fuel tax are not subject to the sales tax on the receipts from these sales. If the special fuel has no special fuel tax imposed or if the special fuel tax is refunded, it is subject to sales tax, unless otherwise exempted. Other fuels are subject to the sales tax when sold without regard to quantity or price unless specifically exempted under the sales tax law.

(2) Fuel is not subject to the sales tax when sold for the purpose of pumping or propelling water ultimately sold at retail. Likewise, the sale of fuel to be consumed in manufacturing or in creating gas, power, steam or electrical current to be ultimately sold at retail is not subject to the sales tax. Fuel is subject to the sales tax when sold for consumption by bakeries for baking their products or heating their establishments, by foundries and steel mills for the purpose of melting ores and by railroads within Missouri.

(3) When fuel is purchased for both exempt and taxable purposes, the purchaser must state at the time of purchase what portion of the fuel will be used for exempt purposes as opposed to the portion that is taxable.

(4) Example: The Big D Company sells fuel oil to the Sky High Utility Company for use in creating electricity and pumping water and natural gas to its customers. The Big D Company is not subject to the sales tax on fuel oil sold for this purpose. The sale of fuel oil to the utility company for use in heating its buildings is subject to the sales tax. The Big D Company must obtain a segregation of use statement at the time of sale.

(5) The amount of propane or natural gas, electricity or diesel fuel which is used exclusively for drying agricultural crops is entitled

to sales tax exemption. If all of the electricity purchased through a single meter is used for drying agricultural crops, the purchaser should provide a written exemption certificate to the electric company so that all electricity is purchased tax free. If the electricity purchased through a single meter is used for multiple purposes such as domestic use and farm business use and the purchaser has been categorized as a domestic use customer by the electric company, the electric company should not charge sales tax on any of the electricity. At the end of the year when the purchaser is preparing his/her state and federal income tax returns (including Schedule F), s/he will take an income tax deduction for the amount of electricity used in his/her farming business. The purchaser will also be required to show to the Missouri Department of Revenue how much of the farm business electricity was used exclusively for drying crops and how much was used in other facets of his/her farm business. If the purchaser is categorized as a nondomestic use customer by the electric company, s/he will be required to pay sales taxes on the entire amount of electricity purchased. At the end of the year when the purchaser is preparing his/her state and federal income tax returns (including Schedule F), s/he will file an application for refund of sales tax for the electricity used for domestic purposes as well as the amount used exclusively for drying agricultural crops. If the total amount of propane gas in a single tank is used for drying agricultural crops, the purchaser should provide a written exemption certificate to the propane seller so that all propane gas is purchased tax free. If the purchases of propane gas in a single tank are used for multiple purposes such as domestic use and farm business use and primary use is a nondomestic use, the customer should notify the propane gas seller to categorize him/her as a nondomestic use customer and s/he will be required to pay sales tax on the entire amount of propane gas purchased. The customer will compute underpayments and overpayments of tax at the end of the year in the same manner as provided previously for electricity and make appropriate payments and refund request in the same manner. Purchasers of diesel fuel to be used exclusively for drying agricultural crops are guided by the same principles set out previously for electricity and propane gas. Purchasers of diesel fuel, propane or natural gas to be used exclusively for drying crops must maintain a separate tank for those purposes unless the only other purpose for which the fuel is used is a nonbusiness domestic use. Diesel fuel which is to be used for drying agricultural

crops as well as other farm business purposes may not be purchased under claim of exemption unless the fuel for drying is segregated at the time of purchase into a separate tank used exclusively for that purpose.

(6) One-half (1/2) of each purchase of diesel fuel which is used to operate tax exempt farm tractors and tax exempt farm machinery is itself tax exempt. In order to properly claim tax exemptions for this purpose, the purchasers should maintain separate fuel tanks which are used ONLY to power the exempt items. A written claim of exemption must be on file with the seller for each purchase of fuel. When selling diesel fuel to be used for tax exempt machinery, the seller should divide the total purchase price by two (2) and compute tax only on one-half (1/2) of the purchase price. Under no circumstances should a purchaser use tax exempt diesel fuel for any purpose except the operation of tax exempt farm machinery. A purchaser should maintain adequate records to substantiate the use made of all diesel fuel purchased under a claim of exemption.

(7) All sales of metered water service; electricity; electrical current; natural, artificial or propane gas; wood; coal or home-heating oil for domestic use are exempt from tax. Also exempted is unmetered water service to residents of the City of St. Louis for domestic use. Domestic use means that portion which the individual purchaser does not use for a business, commercial or industrial purpose. Each seller of metered water service; electricity; electrical current; natural, artificial or propane gas service; and unmetered water service in the City of St. Louis shall establish and maintain a system, based upon the apparent or declared predominant use purpose of the purchaser, where individual purchases are classified as domestic use or nondomestic use based upon principal use. No seller shall charge sales tax on purchases classified as domestic use. Sellers shall charge sales tax upon the entire amount of purchases classified as nondomestic use. Each person making domestic use purchases of services or property and who uses any portion of the services or property so purchased for a nondomestic use, by the fifteenth day of the fourth month following the year of purchase, and without assessment, notice or demand, shall file a return and pay sales tax on that portion of nondomestic purchases. Each person making nondomestic purchases of services or property and who uses any portion of the services or property so purchased for domestic use, between the first day of the first month and the fifteenth day of the fourth month follow-

ing the year of purchase, may apply for credit or make refund to the director of revenue and the director shall give credit or make refund for taxes paid on the domestic use portion of the purchase.

AUTHORITY: section 144.270, RSMo 1994. * This rule was previously filed as rule no. 46 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-12 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Dec. 3, 1985, effective Feb. 24, 1986.

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

In Hern v. Carpenter, 312 SW2d 823 (1958), where subsection 144.030.2, RSMo exempts plaintiffs, who are farmers (purchasers) and a corporate distributor (seller) of motor fuel, from payment of sales tax on sales and purchases of such fuel, the court held all sales of gasoline are exempt from liability for sales tax, including those sales where purchaser declares his intention not to use gasoline for highway purposes and in fact obtains a refund of motor fuel tax paid.

Missouri Public Service Company v. Director of Revenue, 733 SW2d 448 (Mo. banc 1987). Since there is no statutory definition of fuel, the Supreme Court attributed to the work its plain and ordinary meaning. The court found Rolfite exempt from use tax because it is a fuel material which produces heat by burning and is consumed in the manufacture of electricity. The court stated that the fact Rolfite is used primarily for other purposes does not change its essential functional character as a fuel.

Lady Baltimore of Missouri, Inc. v. Director of Revenue, Case Nos. RS-83-2819 and RS-83-2820 (A.H.C. 9/9/87). The petitioner argued that it is exempt under 144.030.2(1), RSMo because diesel fuel is subject to the special fuel tax. The Administrative Hearing Commission held that where the special fuel tax is not paid upon purchase, the fuel is not subject to an excise or sales tax under another law of the state and the sales tax exemption does not apply. Therefore sales tax is due and payable.

The taxpayer in the alternative argued that the respondent was required to collect the tax from the vendor rather than the petitioner as a purchaser. The Administrative Hearing Commission found that under the facts of this case that the petitioner had purchased the special fuel under an improper claim of

exemption and was therefore liable for sales tax.

12 CSR 10-3.274 Farm Machinery and Equipment (Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-13 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed April 7, 1986, effective June 28, 1986. Amended: Filed Feb. 26, 1987, effective May 28, 1987. Amended: Filed Sept. 28, 1995, effective May 30, 1996. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

Charles A. Johnson, Jr. v. Director of Revenue, Case Nos. RS-83-3258 and RS-83-3259 (A.H.C. 5/1/86). The Administrative Hearing Commission found the petitioner was not entitled to an exemption for his seed cleaner and conveyor for two reasons. First, petitioner used the equipment for commercial processing of soybeans other than his own, a use clearly not within the requirement that the equipment be used exclusively and directly for the production of farm products as required by 144.030.2(22), RSMo and further excluded from exemption by 12 CSR 10-3.274(8) because the commercial cleaning operation was not an agricultural use of the cleaning equipment.

Henderson Implement Co., Inc. v. Director of Revenue, Case No. RS-86-0170 (A.H.C. 6/16/88). The Administrative Hearing Commission held that the taxpayer met its burden of proving that soilmovers were farm machinery within the meaning of the statute. The soilmover was found to be essential to production of farm crops on low-lying land and the farmers used the equipment exclusively for such purposes and the link between controlling drainage on the farmland and the production of the crops is a direct relationship. Therefore, the Administrative Hearing Commission concluded that the soilmovers were exempt from sales tax.

12 CSR 10-3.276 Sales of Baling Wire, Baling Twine and Binder Twine (Rescinded June 28, 1986)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 34 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-14 was last filed Dec. 31, 1975, effective Jan.

10, 1976. Rescinded: Filed April 17, 1986, effective June 28, 1986.

12 CSR 10-3.278 Agricultural Feed and Feed Additives

(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 60 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-15 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.280 Sale of Agricultural Products by the Producer

(Rescinded October 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 61 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-16 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed April 5, 2001, effective Oct. 30, 2001.

12 CSR 10-3.282 Sales of Seed, Pesticides and Fertilizers

(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 62 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-17 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.284 Poultry Defined

(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-18 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

Exotic Animal Paradise, Inc. v. Director of Revenue, Case Nos. RS-83-2797, RS-83-2798 and RS-83-2799 (A.H.C. 2/18/86). The

taxpayer purchased and maintained animals for display in its wild animal park. The Administrative Hearing Commission determined that these animals were neither poultry nor livestock normally raised or grown as food for human consumption.

12 CSR 10-3.286 Livestock Defined

(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-19 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

Exotic Animal Paradise, Inc. v. Director of Revenue, Case Nos. RS-83-2797, RS-83-2798 and RS-83-2799 (A.H.C. 2/18/86). The taxpayer purchased and maintained animals for display in its wild animal park. The Administrative Hearing Commission determined that these animals were neither poultry nor livestock normally raised or grown as food for human consumption.

12 CSR 10-3.288 Florists

PURPOSE: This rule interprets the sales tax law as it applies to florists and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Persons selling flowers and flower arrangements, bouquets, wreaths, seeds, plants, shrubs, trees or any other articles of tangible personal property are subject to the sales tax on all these sales.

(2) A Missouri florist, who receives the original order and subsequently wires that order either to another instate florist or an out-of-state florist for delivery, is subject to the sales tax on these transactions. Where an outstate florist accepts the original order and telegraphs the order to a Missouri florist, the Missouri florist is not subject to the Missouri sales tax.

AUTHORITY: section 144.270, RSMo 1994. * This rule was previously filed as rule no. 63 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-20 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.290 Sellers of Poultry

(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 65 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-22 was last filed Dec. 5, 1975, effective Dec. 15, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

P.F.D. Supply Corporation v. Director of Revenue, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The commission, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.

Relying on its previous decision in Blue-side Co. v. Director of Revenue, Case No. RS-82-4625 (A.H.C. 10/5/84) the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to Blue-side, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in Overland Steel, Inc. v. Director of Revenue, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, Art. V, section 2, RSMo (1978) of the

Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the *Overland Steel* case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2) in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.

Finally, the commission held that non-reusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on these items.

12 CSR 10-3.292 Ingredients or Component Parts

(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 77 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-23 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

The Blueside Companies, Inc. v. Director of Revenue, Case No. RS-82-4625 (A.H.C. 10/5/84). The issue in this case was whether chemicals used by the taxpayer in its hide processing operation were partially or totally exempt from sales/use taxes under section 144.030.2(2), RSMo (Supp. 1983) as "materials. . . which when used. . . become a component part or ingredient of the new personal property resulting from such manufacturing, processing, compounding, producing or fabricating. . . ."

The Administrative Hearing Commission ruled that section 144.030.2(2) did not just apply to manufacturers. The statute applied instead to materials used in manufacturing. It is the goods that are used, not the purchaser of the goods, which defines the extent of the exemption.

Secondly, the commission found that the taxpayer was entitled to claim the exemption even though it actually performed the work in question on a contractual basis. It is not necessary that the taxpayer be manufacturing its own goods, and even if it were, as noted pre-

viously, the exemption in question is not limited to manufacturers but to manufacturing, etc. The fact that the taxpayer worked on a contract basis was irrelevant.

The commission also found that the key to whether materials become a component part or ingredient of the new personal property was whether the taxpayer purchased them for its own use and consumption or for resale. Looking to legislative history the court found that section 144.030.2(2) was in fact simply a repetition of the exclusions already inherent in the definitional provisions of section 144.010(8) defining "sale at retail."

While acknowledging that on two previous occasions courts of the state of Missouri have ruled in the taxpayer's favor in cases similar to this one, the commission noted that such rulings were not in accordance with either the well-established rule that exemption statutes must be strictly construed against the taxpayer or the historical purpose of the statute as it was explained in *Southwestern Bell Telephone v. Morris*, 345 SW2d 62 (Mo. En Banc 1961). The commission noted that courts in other states have consistently ruled that the component part exemption is akin to the sale-for-resale philosophy and that chemicals which are not detectable in the finished product do not constitute component parts. Numerous cases from other jurisdictions were cited. Moreover, the mere presence of traces of a chemical in a final product does not make the chemical a component part. The court cited as an example microscopic particles of water vapor and other gases which are left in mined coal by explosives. These trace chemicals do not make the explosives a component part.

The court also cited the elimination of double taxation as the rationale for the component part exemption. Therefore, if the presence of a material in a finished product is merely incidental then the material was not purchased for resale and the purchase should be taxable. In the case at hand the court noted that various products that were purchased to form chrome-tan were totally retained in the product. These materials should be exempt because they were purchased with the intent that they would be resold as part of the product.

The commission distinguished cases where part of the material was intended to become a component part. While some states have taken the position that the purchase of a material with the intention that part of it shall remain in the product at the time of resale will exempt all of the material, the commission took the position that only the part which was intended to become a component part should be exempt, noting that section

144.030.2(2) expressly provides that exemptions for various materials only apply to the extent they are incorporated into products which are intended for resale.

Hardee's of Springfield, Inc., et al. v. Director of Revenue, Case No. RS-82-2181 (A.H.C. 6/11/85). The issue in this case was the imposition of use tax upon shortening used for deep frying foods at petitioner's restaurants. Petitioner asserted that use tax was not due on any of the shortening because it became an ingredient or component part of new personal property and thus exempt as provided by section 144.030.3(1), RSMo (1978). The director countered that petitioner had to be a manufacturer to qualify for this exemption and that no exemption was proper unless the ingredient was totally incorporated into the new product.

The Administrative Hearing Commission cited *Blueside Company v. Director of Revenue*, Case No. RS-82-4625 (A.H.C. 10/5/84) for the proposition that the exemption also applies to processing. However, again citing *Blueside*, the commission held that the ingredient or component part exemption is only applicable to the extent that the article is incorporated in new property. In addition, those articles whose presence in the final product is not necessary or essential are not exempt. The commission found that 50% of the shortening in question was absorbed and therefore exempt.

The bulk of the unabsorbed shortening was sold for salvage. Petitioner contended that this salvage sale constituted a retail sale and that its use of shortening was therefore exempt under section 144.615, RSMo (1978) as property held for resale in the regular course of business. However, the commission rejected petitioner's argument by stating, "If the by-product is an inconsequential portion of the taxpayer's business and the by-product is sold as salvage primarily to avoid the cost of refuse collection, the articles in the by-product would not be exempt from use tax because those articles would be held substantially for use and not for resale."

P.F.D. Supply Corporation v. Director of Revenue, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The Administrative

Hearing Commission, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in “manufacturing, processing, compounding, mining, producing or fabricating” found that the production of food by a restaurant constituted processing.

Relying on its previous decision in *Blueside Co. v. Director of Revenue*, Case No. RS-82-4625 (A.H.C. 10/5/84), the Administrative Hearing Commission found that the petitioner’s sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to *Blueside*, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in *Overland Steel, Inc. v. Director of Revenue*, 647 SW2d 535 (Mo. En Banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, Art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the *Overland Steel* case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2) in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller’s good faith exempted it from liability.

Finally, the commission held that non-reusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on these items.

Teepak, Inc. v. Director of Revenue, Case Nos. RS-86-0123 and RS-86-1430 (A.H.C. 5/13/88). In this case, the taxpayer argued that casings used in the manufacture of hot dogs were exempt from sales tax under the component part exemption. The Administrative Hearing Commission rejected the taxpayer’s argument, finding that there was no purposeful incorporation of the casing, or its parts, into the finished hot dog, therefore, the component part exemption did not apply.

Pea Ridge Iron Ore Co., Inc. v. Director of Revenue, Case Nos. RS-84-1398, RS-84-1468, RS-84-1469, RS-84-1470, RS-84-1728, RS-84-1729 and RS-86-0517 (A.H.C. 6/30/88). The primary substantive issue was whether the taxpayer’s purchases of grinding balls, grinding rods, bentonite and olivine were exempt under the steel products exemption in 144.030.2(2), RSMo which exempts “materials and manufactured goods which are ultimately consumed in the manufacturing process by becoming, in whole or in part, a component part or ingredient of steel products intended to be sold ultimately for final use or consumption.” The Administrative Hearing Commission held that the presence of the grinding media and bentonite in the final product, though a secondary purpose and not the primary intended purpose, was sufficient to qualify the materials for the steel products exemption. The materials were purchased with an intent and purpose of becoming an identifiable and detectable ingredient or component part of the iron or pellets, and therefore were exempt.

Marshall Scott Enterprises, Inc. v. Director of Revenue, Case No. RS-87-0786, *Kentucky Fried Chicken of Spanish Lake, Inc.*, Case No. RS-87-0787 and *Al-Tom Investment, Inc. d/b/a Kentucky Fried Chicken*, Case No. RS-87-0788 (A.H.C. 7/8/88). The taxpayers contended that the purchases of shortening were excluded from taxation under 144.010.1(8), RSMo (1994), because the shortening was substantially incorporated in the food products and therefore was for resale as a portion of the food products. The Administrative Hearing Commission rejected this argument and reaffirmed its decision in *Blueside Companies, Inc. v. Director of Revenue*, Case No. RS-82-4625 (10/5/84).

Golden Business Forms, Inc. v. Director of Revenue, Case No. RS-86-2524 (A.H.C. 9/26/88). The Administrative Hearing Commission ruled that even though printing plates and punches are necessary to the manufacturing process, the plates and punches do not become a component part or ingredient of the

final printed product. In order to be a component part or ingredient of the final product the plates and punches must be physically incorporated into the printed business forms. The evidence was that they did not.

St. Joe Minerals Corporation v. Director of Revenue, Case Nos. RS-85-1812 and RS-85-2289 (A.H.C. 9/13/88). The Administrative Hearing Commission reaffirmed earlier decisions that held that before materials can be exempt as component parts or ingredients they must be shown to have been purchased for the purpose of becoming part of the final product. They must also be shown to have become a part of the product and must be detectable in the final product. They must also serve a purpose in the final product and not be just an impurity. It is not enough that the materials are necessary to the manufacturing process; it must be shown that the materials are purposefully incorporated into that final product.

12 CSR 10-3.294 Component Parts (Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 77 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-24 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refined March 30, 1976. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

The Blueside Companies, Inc. v. Director of Revenue, Case No. RS-82-4625 (A.H.C. 10/5/84). The issue in this case was whether chemicals used by the taxpayer in its hide processing operation were partially or totally exempt from sales/use taxes under section 144.030.2(2), RSMo (Supp. 1983) as “materials. . . which when used. . . become a component part or ingredient of the new personal property resulting from such manufacturing, processing, compounding, producing or fabricating. . . .”

The Administrative Hearing Commission ruled that section 144.030.2(2) did not just apply to manufacturers. The statute applied instead to materials used in manufacturing. It is the goods that are used, not the purchaser of the goods, which defines the extent of the exemption.

Secondly, the commission found that the taxpayer was entitled to claim the exemption even though it actually performed the work in question on a contractual basis. It is not necessary that the taxpayer be manufacturing its

own goods, and even if it were, as noted previously, the exemption in question is not limited to manufacturers but to manufacturing, etc. The fact that the taxpayer worked on a contract basis was irrelevant.

The commission also found that the key to whether materials become a component part or ingredient of the new personal property was whether the taxpayer purchased them for its own use and consumption or for resale. Looking to legislative history the court found that section 144.030.2(2) was in fact simply a repetition of the exclusions already inherent in the definitional provisions of section 144.0101.(8) defining "sale at retail."

While acknowledging that on two previous occasions courts of the state of Missouri have ruled in the taxpayer's favor in cases similar to this one, the commission noted that such rulings were not in accordance with either the well-established rule that exemption statutes must be strictly construed against the taxpayer or the historical purpose of the statute as it was explained in *Southwestern Bell Telephone v. Morris*, 345 SW2d 62 (Mo. banc 1961). The commission noted that courts in other states have consistently ruled that the component part exemption is akin to the sale-for-resale philosophy and that chemicals which are not detectable in the finished product do not constitute component parts. Numerous cases from other jurisdictions were cited. Moreover, the mere presence of traces of a chemical in a final product does not make the chemical a component part. The court cited as an example microscopic particles of water vapor and other gases which are left in mined coal by explosives. These trace chemicals do not make the explosives a component part.

The court also cited the elimination of double taxation as the rationale for the component part exemption. Therefore, if the presence of a material in a finished product is merely incidental then the material was not purchased for resale and the purchase should be taxable. In the case at hand the court noted that various products that were purchased to form chrome-tan were totally retained in the product. These materials should be exempt because they were purchased with the intent that they would be resold as part of the product.

The commission distinguished cases where part of the material was intended to become a component part. While some states have taken the position that the purchase of a material with the intention that part of it shall remain in the product at the time of resale will exempt all of the material, the commission took the position that only the part which was intended to become a component part

should be exempt, noting that section 144.030.2(2) expressly provides that exemptions for various materials only apply to the extent they are incorporated into products which are intended for resale.

Hardee's of Springfield, Inc., et al. v. Director of Revenue, Case No. RS-82-2181 (A.H.C. 6/11/85). The issue in this case was the imposition of use tax upon shortening used for deep frying goods at petitioner's restaurants. Petitioner asserted that use tax was not due on any of the shortening because it became an ingredient or component part of new personal property and thus was exempt as provided by section 144.030.3(1), RSMo (1978). The director countered that petitioner had to be a manufacturer to qualify for this exemption and that no exemption was proper unless the ingredient was totally incorporated into the new product.

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The bulk of the unabsorbed shortening was sold for salvage. Petitioner contended that this salvage sale constituted a retail sale and that its use of shortening was therefore exempt under section 144.615, RSMo (1978) as property held for resale in the regular course of business. However, the commission rejected petitioner's argument by stating, "If the by-product is an inconsequential portion of the taxpayer's business and the by-product is sold as salvage primarily to avoid the cost of refuse collection, the articles in the by-product would not be exempt from use tax because those articles would be held substantially for use and not for resale."

P.F.D. Supply Corporation v. Director of Revenue, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The Administrative Hearing Commission, relying on the exemption set forth in section 144.030.3(1), RSMo

for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.

Relying on its previous decision in *Blueside Co. v. Director of Revenue*, Case No. RS-82-4625 (A.H.C. 10/5/84) the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to *Blueside*, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in *Overland Steel, Inc. v. Director of Revenue*, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, Art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the *Overland Steel* case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2) in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.

Finally, the commission held that nonreusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on such items.

Hardee's of Springfield, Inc. et al. v. Director of Revenue, Case No. RS-82-wr 42181

(A.H.C. 6/11/85). The Administrative Hearing Commission held that the ingredient or component part exemption is only applicable to the extent that the article is incorporated in new property. In addition, those articles whose presence in the final product is not necessary to essential are not exempt. The commission found that 50% of the shortening in question was absorbed and therefore exempt.

Teepak, Inc. v. Director of Revenue, Case Nos. RS-86-0123 and RS-86-1430 (A.H.C. 5/13/88). In this case, the taxpayer argued that casings used in the manufacture of hot dogs were exempt from sales tax under the component part exemption. The Administrative Hearing Commission rejected the taxpayer's argument, finding that there was no purposeful incorporation of the casing, or its parts, into the finished hot dog, therefore, the component part exemption did not apply.

Pea Ridge Iron Ore Co., Inc. v. Director of Revenue, Case Nos. RS-84-1398, RS-84-1468, RS-84-1469, RS-84-1470, RS-84-1728, RS-84-1729 and RS-86-0517 (A.H.C. 6/30/88). The primary substantive issue was whether the taxpayer's purchases of grinding balls, grinding rods, bentonite and olivine were exempt under the steel products exemption in 144.030.2(2), RSMo which exempts "materials and manufactured goods which are ultimately consumed in the manufacturing process by becoming, in whole or in part, a component part or ingredient of steel products intended to be sold ultimately for final use or consumption." The Administrative Hearing Commission held that the presence of the grinding media and bentonite in the final product, though a secondary purpose and not the primary intended purpose, was sufficient to qualify the materials for the steel products exemption. The materials were purchased with an intent and purpose of becoming an identifiable and detectable ingredient or component part of the iron ore pellets, and therefore were exempt.

Marshall Scott Enterprises, Inc. v. Director of Revenue, Case No. RS-87-0786, **Kentucky Fried Chicken of Spanish Lake, Inc.**, Case No. RS-87-0787 and **Al-Tom Investment, Inc. d/b/a Kentucky Fried Chicken**, Case No. RS-87-0788 (A.H.C. 7/8/88). The taxpayers contended that the purchases of shortening were excluded from taxation under 144.010.1(8), RSMo, because the shortening was substantially incorporated in the food products and therefore was for resale as a portion of the food products. The Administrative Hearing Commission rejected this argu-

ment and reaffirmed its decision in **Blueside Companies, Inc. v. Director of Revenue**, Case No. RS-82-4625 (10/5/84).

Snap Shot Photo v. Director of Revenue, Case No. RS-87-1056 (A.H.C. 8/29/88). The Administrative Hearing Commission found that all chemicals used in the photofinishing process as part of a closed vat system, and not washed away during the process, were exempt from taxation because "all such chemicals do become ingredients and component parts of all the products over time."

St. Joe Minerals Corporation v. Director of Revenue, Case Nos. RS-85-1812 and RS-85-2289 (A.H.C. 9/13/88). The Administrative Hearing Commission reaffirmed earlier decisions that held that before materials can be exempt as component parts or ingredients they must be shown to have been purchased for the purpose of becoming part of the final product. They must also be shown to have become a part of the product and must be detectable in the final product. They must also serve a purpose in the final product and not be just an impurity. It is not enough that the materials are necessary to the manufacturing process; it must be shown that the materials are purposefully incorporated into that final product.

12 CSR 10-3.296 Manufacturing Defined (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMO 1978. S.T. regulation 030-25 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

Wendy's of Mid-America, Inc. v. Department of Revenue, Case No. RS-79-0222 (A.H.C. 7/22/82). Machinery and equipment used in fast food restaurants are not entitled to section 144.0302.(4), RSMo exemption because fast food restaurants clearly do not constitute manufacturing plants. Section 144.615(6), RSMo exemption from use tax is applicable to foil, wax paper and bags used in fast food restaurants because they are held solely to be incorporated into products which are resold in the regular course of taxpayer's business.

12 CSR 10-3.298 Electrical Appliance Manufacturers (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-26 was last filed Dec. 31,

1975, effective Jan. 10, 1976. Rescinded: Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.300 Common Carriers (Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-27 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Dec. 10, 1986, effective April 11, 1987. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

Western Trailer Service, Inc. v. LePage, 575 SW2d 173 (Mo. banc 1978). Where, under contract, employees of trailer company went to Kansas, picked up trailers and brought them into state and, after repairs were made and repair parts installed, trailers were returned under contract to Kansas by trailer company employees, there was dealing between persons of different states in which importation was an essential feature or formed a component part of the transaction, with retail sales made in commerce between the two states, to which an exemption from sales tax for being in interstate commerce applied.

12 CSR 10-3.302 Airline Defined (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-27A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.304 Common Carrier Exemption Certificates

PURPOSE: This rule provides guidelines as to the use of common carrier exemption certificates and interprets and applies sections 144.030.2(3) and 144.080, RSMo.

(1) When a sale to a common carrier is made, an exemption certificate should be completed. The certificate should contain the Public Service Commission (PSC) number and Interstate Commerce Commission (ICC) number. A determination can be made as to whether the vehicle is used as a common carrier or a contract carrier from the Missouri PSC number. If the vehicle is used as a contract carrier, the PSC number will be followed by a dash "X" (T5000—X). If the common carrier has only an ICC number, a determination should be made by the seller as

to whether the purchaser is actually engaged as a common carrier and the number must appear on all supporting documents.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 030-28 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.

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

12 CSR 10-3.306 Aircraft
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-29 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.308 Boat Manufacturing Equipment
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-30 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.310 Truckers
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-31 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.312 Local Delivery and Terminal Equipment
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-32 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.314 Patterns and Dies
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 54 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-33 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.316 Replacement Machinery and Equipment
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 26 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-34 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

Floyd Charcoal Co. v. Director of Revenue, 599 SW2d 173 (Mo. banc 1980). To determine if new or replacement equipment is exempt from sales or use tax, an integrated plant approach is used to determine if it is used directly in manufacturing products.

St. Joseph Light & Power Co. v. Director of Revenue, Case No. RS-79-0162 (A.H.C. 1/21/83). Taxpayer utility company purchased a new boiler to replace a boiler that was worn out. The issue is whether the boiler's purchase should be exempt from use tax pursuant to section 144.030.3(3), RSMo which exempts the purchase of machinery and equipment used directly for manufacturing or fabricating when the purchase is caused by reason of a design or product change, or whether it is exempt under section 144.030.3(4), RSMo as machinery or equipment used to expand an existing manufacturing plant. The Administrative Hearing Commission found that because the boiler was purchased to replace a worn-out boiler, it was precluded from finding that the machinery was purchased by reason of a design or product change. Therefore, taxpayer was not entitled to an exemption on this basis. However, the commission found that the new boiler did expand the plant's capacity by five megawatts and allowed the boiler to operate an additional two days per month. Based upon this finding, the commission concluded that the new boiler was equipment purchased and used to expand an existing manufacturing plant in this state.

Empire District Electric Co. v. Director of Revenue, Case No. RS-79-0249 (A.H.C. 3/29/83). In this case the issue was the taxability of a transformer, concrete, oil and antifreeze used in an electric generating facility. The Administrative Hearing Commission was faced with the task of applying the new "integrated plant" theory which the Missouri Supreme Court adopted in *Floyd Charcoal Co. v. Director of Revenue*, 599 SW2d 173 (Mo. banc 1980) and *Noranda Aluminum v. Missouri Department of Revenue*, 599 SW2d 1 (Mo. banc 1980) to determine whether these items were exempt under section

144.030.3(4), RSMo from sales and use tax as "machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating." The commission found that while Missouri has adopted the integrated plant theory, it is apparent from the statute limiting language that not all items used in the manufacture of a product are exempt from sales or use tax.

With respect to the oil and antifreeze the commission found, first of all, that it did not qualify as a "device" and thus could not be considered equipment and machinery. It also found that the oil and antifreeze, though used in the start up of equipment, was not solely required for installation and construction. It continued to be used in the machinery after start up and, therefore, it was not exempt as supplies used solely for installation or construction of this machinery or equipment.

With respect to the concrete that was used to construct duct banks protecting the electrical system and manhole covers for access to the electrical system, the court found that the decision in *Noranda Aluminum* was not controlling, because in that case the materials in question were used to construct duct banks which prevented the spillage of molten aluminum. Because the cement in question was not used to protect the electrical system from the manufacturing process itself, it was found not to be an integral part of that manufacturing process. Therefore, the concrete was not exempt from sales or use tax.

With respect to the step-up transformer, the court found that it had two functions. It had a nonexempt function controlling the transmission of electricity to customers. The commission relied on New York law to the effect that the generation of voltage is manufacturing, the transmission of voltage is not. However, several times a year the transformer was used to start a generator which manufactures electricity. On those occasions the transformer was used in the manufacturing process. Therefore, the transformer is exempt from sales tax or use tax, because section 144.030.3(4), RSMo does not require that machinery be used exclusively or even primarily for manufacturing to qualify for exemption (see also *State ex rel. Ozark Lead Co. v. Goldberg*, 610 SW2d 954 (1981) and *Noranda Aluminum v. Missouri Department of Revenue*, 599 SW2d 1 (Mo. banc 1980)).

American Lithographers, Inc. v. Director of Revenue, Case No. RS-87-1355 (A.H.C. 10/25/88). The Administrative Hearing Commission found that the purchase of printing plates was exempt from the imposition of sales and use tax under 144.030.2(4), RSMo as "replacement parts replaced by reason of

product or design change.” The Administrative Hearing Commission compared the printing plates with the dies and molds used by automobile manufacturers and then cited the Department of Revenue’s regulation 12 CSR 10-3.316(2) which states in part that “if an automobile plant must replace machinery because the present machinery cannot do the work due to changes on the new models, the machinery is not subject to the sales tax.”

Tension Envelope Corp. v. Director of Revenue, Case No. RS-87-0420 (A.H.C. 12/6/88). The Administrative Hearing Commission found that printing plates were exempt under 144.030.2(4), RSMo as “replacement parts replaced by reason of product or design change.” In reference to the artwork and the prep work, the Administrative Hearing Commission, citing the case of **Empire District Electric v. Director of Revenue**, Case No. RS-79-0249, stated that one requirement for eligibility under section 144.030 is that the item be a “device” and because the artwork and prep work are not devices their purchase was not exempt under 144.030.2(4).

12 CSR 10-3.318 Ceramic Greenware Molds
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 030-35 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

12 CSR 10-3.320 New or Expanded Plant
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-36 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded and readopted: Filed Sept. 28, 1989, effective Jan. 12, 1990. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

Wendy’s of Mid-America, Inc. v. Department of Revenue, Case No. RS-79-0222 (A.H.C. 7/22/82). Machinery and equipment used in fast food restaurants are not entitled to section 144.030.2(4), RSMo exemption because fast food restaurants clearly do not constitute manufacturing plants. Section 144.615(6), RSMo exemption from use tax is applicable to foil, wax paper and bags used in fast food restaurants because they are held

solely to be incorporated into products which are resold in the regular course of taxpayer’s business.

Jackson Excavating Co. v. Department of Revenue, 649 SW2d 48 (Mo. banc 1983). The sole issue in this case is whether machinery used to purify water for human consumption is entitled to a sales/use tax exemption under section 144.030.3(4), RSMo as machinery used to establish a new or expand an existing manufacturing plant. In this case the Supreme Court cited **West Lake Quarry & Material Co. v. Schaffner**, 451 SW2d 140 (Mo. banc 1970), and **Heidelberg Central, Inc. v. Director of Revenue**, 476 SW2d 502 (Mo. banc 1972), as the basis for finding that the purification of water was “a transformation of raw material by the use of machinery, labor and skill into a product for sale which has an intrinsic and merchantable value in a form suitable for new uses.” In passing, the court acknowledged the decision in **State ex rel. A.M.F., Inc. v. Spradling**, 518 SW2d 58 (Mo. banc 1974), where it held that the retreading of worn tire carcasses was not manufacturing, but did not distinguish it from the case at hand.

St. Joseph Light & Power Co. v. Director of Revenue, Case No. RS-79-0162 (A.H.C. 1/21/83). Taxpayer utility company purchased a new boiler to replace a boiler that was worn out. The issue is whether the boiler’s purchase should be exempt from use tax pursuant to section 144.030.3(3), RSMo which exempts the purchase of machinery and equipment used directly for manufacturing or fabricating when the purchase is caused by reason of a design or product change, or whether it is exempt under section 144.030.3(4), RSMo as machinery or equipment used to expand an existing manufacturing plant. The Administrative Hearing Commission found that because the boiler was purchased to replace a worn-out boiler, it was precluded from finding that the machinery was purchased by reason of a design or product change. Therefore, taxpayer was not entitled to an exemption on this basis. However, the commission found that the new boiler did expand the plant’s capacity by five megawatts and allowed the boiler to operate an additional two days per month. Based upon this finding, the commission concluded that the new boiler was equipment purchased and used to expand an existing manufacturing plant in this state.

Empire District Electric Co. v. Director of Revenue, Case No. RS-79-0249 (A.H.C. 3/29/83). In this case the issue was the tax-

bility of a transformer, concrete, oil and antifreeze used in an electric generating facility. The Administrative Hearing Commission was faced with the task of applying the new “integrated plant” theory which the Missouri Supreme Court adopted in **Floyd Charcoal Co. v. Director of Revenue**, 599 SW2d 173 (Mo. banc 1980) and **Noranda Aluminum v. Missouri Department of Revenue**, 599 SW2d 1 (Mo. banc 1980) to determine whether these items were exempt under section 144.030.3(4), RSMo from sales and use tax as “machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating.” The commission found that while Missouri has adopted the integrated plant theory, it is apparent from the statute limiting language that not all items used in the manufacture of a product are exempt from sales or use tax.

With respect to the oil and antifreeze the commission found, first of all, that it did not qualify as a “device” and thus could not be considered equipment and machinery. It also found that the oil and antifreeze, though used in the start up of equipment, was not solely required for installation and construction. It continued to be used in the machinery after start up and, therefore, it was not exempt as supplies used solely for installation or construction of this machinery or equipment.

With respect to the concrete that was used to construct duct banks protecting the electrical system and manhole covers for access to the electrical system, the court found that the decision in **Noranda Aluminum** was not controlling, because in that case the materials in question were used to construct duct banks which prevented the spillage of molten aluminum. Because the cement in question was not used to protect the electrical system from the manufacturing process itself, it was found not to be an integral part of that manufacturing process. Therefore, the concrete was not exempt from sales or use tax.

With respect to the step-up transformer, the court found that it had two functions. It had a nonexempt function controlling the transmission of electricity to customers. The commission relied on New York law to the effect that the generation of voltage is manufacturing, the transmission of voltage is not. However, several times a year the transformer was used to start a generator which manufactures electricity. On those occasions the transformer was used in the manufacturing process. Therefore, the transformer is exempt from sales tax or use tax, because section 144.030.3(4), RSMo does not require that machinery be used exclusively or even primarily for manufacturing to qualify for exemption.

12 CSR 10-3.324 Rock Quarries
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-38 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

West Lake Quarry & Material Co. v. Schaffner, 451 SW2d 140 (Mo. banc 1970). Taxpayer's removal of rock from the ground is included in the term mining as used in section 144.030.3(4). The court found equipment used to mine and refine rock including crushing equipment, was exempt from sales and use tax. Equipment used to load customer's trucks is not directly used in either manufacturing or mining the product intended to be sold or required to be exempt under section 144.030.3(4), RSMo.

Rotary Drilling Supply, Inc. v. Director of Revenue, 662 SW2d 496 (Mo. banc 1983). Petitioner contended that its sales of drilling rigs were exempt from sales tax under section 144.030.3(4), RSMo on the grounds that they were purchased from petitioner for the purpose of expanding or establishing mining plants in this state. Petitioner had failed to obtain exemption certificates from its purchasers and, therefore, it would be liable for uncollected tax. The court refused to recognize water-well drilling as a form of mining. The use of rigs to drill water wells for any purpose or exploratory holes would not constitute mining within the exemption requirement. The evidence was that this was the primary function performed by these rotary drills. The court then went on to reject the Administrative Hearing Commission's conclusion that none of the sales were exempt because a predominant number of rigs were not put to an exempt use. The case was remanded for an evidentiary hearing at which the commission was to determine the exempt status of each rig.

American Industries Resources Corp., Missouri Mining, Inc. v. Director of Revenue, Case Nos. RS 84-0922-0925 (A.H.C. 10/28/88) Taxpayer is in the business of mining coal. It operated a surface coal mine or strip mine. Taxpayer purchased a bulldozer for reclamation purposes but also occasionally used it to remove the last layer of coal covering the coal field. The bulldozer was found to be exempt as "machinery. . . purchased and used to establish new or expand existing. . . mining. . . plants in the state" under 144.030.2(5), RSMo.

12 CSR 10-3.326 Direct Use
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 26 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-39 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed May 12, 1987, effective Aug. 27, 1987. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

Floyd Charcoal Co. v. Director of Revenue, 599 SW2d 173 (Mo. banc 1980). To determine if new or replacement equipment is exempt from sales or use tax, an integrated plant approach is used to determine if it is used directly in manufacturing products.

Wendy's of Mid-America, Inc. v. Department of Revenue, Case No. RS-79-0222 (A.H.C. 7/22/82). Machinery and equipment used in fast food restaurants are not entitled to section 144.030.2(4), RSMo exemption because fast food restaurants clearly do not constitute manufacturing plants. Section 144.615(6), RSMo exemption from use tax is applicable to foil, wax paper and bags used in fast food restaurants because they are held solely to be incorporated into products which are resold in the regular course of taxpayer's business.

Jackson Excavating Co. v. Department of Revenue, 646 SW2d 48 (Mo. banc 1983). The sole issue in this case is whether machinery used to purify water for human consumption is entitled to a sales/use tax exemption under section 144.030.3(4), RSMo as machinery used to establish a new or expand an existing manufacturing plant. In this case the Supreme Court cited *West Lake Quarry & Material Co. v. Schaffner*, 451 SW2d 140 (Mo. banc 1970), and *Heidelberg Central, Inc. v. Director of Revenue*, 476 SW2d 502 (Mo. banc 1972), as the basis for finding that the purification of water was "a transformation of raw material by the use of machinery, labor and skill into a product for sale which has an intrinsic and merchantable value in a form suitable for new uses." In passing, the court acknowledged the decision in *State ex rel. AMF, Inc. v. Spradling*, 518 SW2d 58 (Mo. banc 1974), where it held that the retreading of worn tire carcasses was not manufacturing, but did not distinguish it from the case at hand.

Empire District Electric Co. v. Director of Revenue, Case No. RS-79-0249 (A.H.C. 3/29/83). In this case the issue was the tax-

bility of a transformer, concrete, oil and antifreeze used in an electric generating facility. The commission was faced with the task of applying the new integrated plant theory which the Missouri Supreme Court adopted in *Floyd Charcoal Co. v. Director of Revenue*, 599 SW2d 173 (Mo. banc 1980) and *Noranda Aluminum v. Missouri Department of Revenue*, 599 SW2d 1 (Mo. banc 1980) to determine whether these items were exempt under section 144.030.3(4), RSMo from sales and use tax as "machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating." The commission found that while Missouri has adopted the integrated plant theory, it is apparent from the statute limiting language that not all items used in the manufacture of a product are exempt from sales or use tax.

With respect to the oil and antifreeze the commission found, first of all, that it did not qualify as a device and thus could not be considered equipment and machinery. It also found that the oil and antifreeze, though used in the start up of equipment, was not solely required for installation and construction. It continued to be used in the machinery after start up and, therefore, it was not exempt as supplies used solely for installation or construction of such machinery or equipment.

With respect to the concrete that was used to construct duct banks protecting the electrical system and manhole covers for access to the electrical system, the court found that the decision in *Noranda Aluminum* was not controlling, because in that case the materials in question were used to construct duct banks which prevented the spillage of molten aluminum. Because the cement in question was not used to protect the electrical system from the manufacturing process itself, it was found not to be an integral part of that manufacturing process. Therefore, the concrete was not exempt from sales or use tax.

With respect to the step-up transformer, the court found that it had two functions. It had a nonexempt function controlling the transmission of electricity to customers. The commission relied on New York law to the effect that the generation of voltage is manufacturing, the transmission of voltage is not. However, several times a year the transformer was used to start a generator which manufactures electricity. On those occasions the transformer was used in the manufacturing process. Therefore, the transformer is exempt from sales tax or use tax, because section 144.030.3(4), RSMo does not require that machinery be used exclusively or even primarily for manufacturing to qualify for exemption.

12 CSR 10-3.327 Exempt Machinery
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Aug. 6, 1980, effective Jan. 1, 1981. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

Wendy's of Mid-Missouri, Inc. v. Department of Revenue, Case No. RS-79-0222 (A.H.C. 7/22/82). Machinery and equipment used in fast food restaurants are not entitled to section 144.030.2(4), RSMo exemption because fast food restaurants do not constitute manufacturing plants.

Jackson Excavating v. Administrative Hearing Commission, 646 SW2d 48 (Mo. banc 1983). Machinery used to purify water for human consumption is exempt from sales or use tax as machinery used to establish a new or to expand an existing manufacturing plant. The court stated the purifications of water is "a transformation of raw material by the use of machinery, labor and skill into a product for sale which has an intrinsic and merchantable value in a form suitable for new uses."

12 CSR 10-3.328 Contractor Conditions
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-40 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.330 Realty

PURPOSE: This rule interprets the sales tax law as it applies to sales of tangible personal property for incorporation into realty and interprets and applies section 144.010, RSMo.

(1) Sales tax does not apply to the sale of realty or an interest in realty. Nor does it apply to fixtures or improvements to realty where title does not pass until after the property has been attached to and become commingled with and part of the realty.

(2) Example: A cabinet maker is not subject to sales tax for the moneys received under a contract where s/he constructs and installs kitchen cabinets in a home under construction.

(3) Persons selling tangible personal property to construction contractors, general or prime contractors, subcontractors or special con-

tractors for incorporation into realty, are subject to the sales tax on the gross receipts from all these sales.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 18 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-41 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

State ex rel. Otis Elevator Co. v. Smith, 212 SW2d 580 (Mo. banc 1948). Otis Elevator Company was in the business of designing, constructing, installing and repairing elevators in buildings. Respondent claimed there was no sales tax due to petitioner Smith because the materials used to construct new elevators or to modify existing elevators lost their character or status as tangible personal property and became a part of the real property coincidentally with their delivery and attachment to the building. Respondent kept a title retention clause in his contract with the building contractor allowing him to retain title to the elevator until he was paid in full and if not, to remove the elevator. Judge Ellison held this clause prevented the tangible personal property from being joined with the realty. Absent this contractual clause, the court would have reached a different conclusion.

Where the contract for installation of new elevators, and reconstruction or major repairs to existing elevators whereby elevator company retains title to materials until paid, the elevator company is liable for sales tax. Had the contract not contained the title retentions clause the elevator company would not be liable for sales tax.

Where elevator company does repair work on existing elevators and supplies small parts which become part of the elevator, and does not retain title to the parts, the company is not subject to sales tax. The parts become part of the realty (see *Air Comfort Service, Inc. v. Director of Revenue*, Case No. RS-83-1982 (A.H.C. 4/25/84) and *Marsh v. Spradling*, 537 SW2d 402 (Mo. banc 1976)).

Op. Atty. Gen. No. 85, Stapleton (1-15-58). Where contractor purchases tangible personal property from subcontractor or material-man, sales tax must be paid.

Builders Glass & Products Co. v. Director of Revenue, Case No. RS-85-0453 (A.H.C. 5/13/87). The assessments at issue dealt with transactions between Builders Glass & Prod-

ucts and various sales tax exempt religious and charitable organizations. The Administrative Hearing Commission found that the petitioner as a contractor should have paid sales tax on its purchases of supplies and materials used in completing its contracts. Therefore, the Department of Revenue did properly impose tax upon the purchase by petitioner of materials used and consumed by it as a contractor and the tax was properly collectable directly from the taxpayer who had purchased the materials under an improper claim of exemption.

12 CSR 10-3.332 United States Government Suppliers
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-42 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

State ex rel. Thompson-Stearns-Roger v. Schaffner, 489 SW2d 207 (1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.

12 CSR 10-3.333 Cities or Counties May Impose Sales Tax on Domestic Utilities

PURPOSE: This rule interprets the sales tax law as it applies to local government agencies imposing sales tax on domestic utilities and interprets and applies section 144.030, RSMo.

(1) A city or county local sales tax which was in effect prior to January 1, 1980 applies to domestic utilities until rescinded by ordinance.

(2) A city or county local sales tax which was in effect on or after January 1, 1980, by ordinance, may impose a local sales tax upon all sales of metered water service, electricity, electrical current and natural, artificial or

propane gas, wood, coal or home heating oil for domestic use. The ordinance must be submitted to the director of revenue by United States registered mail or certified mail.

(3) The tax will be administered and become effective in the same manner as any other city or county sales tax as provided by sections 66.600–66.635, 67.500–67.545 and 94.500–94.570, RSMo (see *Laclede Gas Company v. City of Woodson Terrace*, 622 SW2d 315 (Mo. App. 1981)).

AUTHORITY: section 144.270, RSMo 1994.* Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.

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

Richard A. King v. Laclede Gas Co., 648 SW2d 113 (Mo. banc 1983). The director of revenue appealed from the decision of the Administrative Hearing Commission which held that the electricity which taxpayer used to operate its storage facility for natural gas and liquid propane was exempt from sales tax on the grounds that it was being used in a noncommercial, nondomestic, nonindustrial manner. The commission relied on the decision in *State ex rel. Kansas City Power and Light Co. v. Smith*, 111 SW2d 513 (1938) to find that the electricity in question was being used in internal operations and was thus non-commercial. The court chose to broaden the definition of commercial as it is used in section 144.020, RSMo to include those activities which are an integral part of the commercial activities of the taxpayer. Thus, the electricity used to operate the storage facilities was taxable because it was an integral part of the taxpayer's commercial utility operation. The court overruled the *Smith* case, but only insofar as it conflicts with the holding in the case at hand.

12 CSR 10-3.334 Breeding Defined
(Rescinded December 11, 1980)

AUTHORITY: section 144.279, RSMo 1978. S.T. regulation 030-43 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.336 Animals Purchased for Feeding or Breeding Purposes
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-44 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March

30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

Exotic Animal Paradise, Inc., v. Director of Revenue, Case Nos. RS-83-2797, RS-83-2798 and RS-83-2799 (A.H.C. 2/18/86). The general issues raised by petitioner were whether or not it was subject to sales and use tax on its purchases of birds and animals for display in its wild animal park; subject to sales tax on the purchase of feed for those animals; and subject to sales tax on the subsequent resale of those animals, after they had been used by petitioner. The Administrative Hearing Commission ruled for the director on all points.

12 CSR 10-3.340 Newsprint
(Rescinded June 11, 1990)

AUTHORITY: section 144.270, RSMo 1986. Previously filed as rule no. 72 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-45 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Feb. 27, 1990, effective June 11, 1990.

Daily Record Co., d/b/a Mid-America Printing Company v. Ray S. James, 629 SW2d 348 (Mo. banc 1982). This opinion by Judge Seiler defines the term newspaper. It cites without comment Department of Revenue's definition of newspaper which is contained in 12 CSR 10-3.112. It held that an advertising supplement which is printed solely to be inserted into and distributed by a newspaper is an integral part of that newspaper and is entitled to same exemption from sales tax as is remainder of newspaper.

James v. Mars Enders, Inc., 629 SW2d 331 (Mo. banc 1982). Printing costs of advertising supplements, which were printed to be distributed as part of newspaper and which were, in fact, distributed as part of newspaper, were not sales of tangible personal property or services and were thus not subject to sales tax; newsprint used to print such supplements was "newsprint used in newspaper" and was exempt from taxation.

12 CSR 10-3.342 Books, Magazines and Periodicals
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 72 Jan. 22, 1973, effective Feb. 1, 1973, S.T. regulation 030-46

was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1982.

12 CSR 10-3.344 Newspaper Sales
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 72 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-47 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.346 Printing Equipment
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 71 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-48 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.348 Printers

PURPOSE: This rule interprets the sales tax law as it applies to printers and interprets and applies sections 144.010, 144.020 and 144.030, RSMo.

(1) Persons engaged in printing publications, pamphlets, catalogues, leaflets, advertising circulars, stationery and the like, are creating new tangible personal property through these services and are subject to the sales tax on the gross receipts. No deductions are allowed whatsoever for preparing copy, artwork, compositions, phototype or any other services or labor which may be included in the charge.

(2) Materials and supplies such as paper and ink may be purchased tax exempt by printers under the terms of a sale for resale if these materials and supplies become an ingredient or component part of the finished product which will ultimately be sold at retail.

(3) Persons selling supplies and materials such as paper to purchasers who furnish these supplies and materials to printers for use in completing printing jobs for them are subject to the sales tax on the gross receipts from all these sales.

(4) Presses purchased by printers are exempted from sales and use taxes if purchased to establish a new manufacturing plant or to expand an existing manufacturing plant or if

purchased for reason of change of design or product and used to produce a product which is to be ultimately sold at retail. Merely the replacement of a printing press, because of obsolescence, the availability of a machine with greater capacity or excessive upkeep and maintenance costs or other similar reasons does not in itself qualify for this exemption.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 71 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-49 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

K & A Litho Process, Inc. v. Department of Revenue, 653 SW2d 195 (Mo. banc 1983). The issue in this case was whether the decision of the Administrative Hearing Commission upholding sales tax on lithographic work performed by the appellant was correct. The court, following its recent decision in **James v. TRES Computer Systems, Inc.**, 642 SW2d 347 (Mo. banc 1982), found that the lithographic process was the nontaxable sale of a technical professional service and that the transfer of ownership to tangible personal property was only incidental. K & A Litho Process received a color transparency from an outside source such as a printer, advertising agency or publishing house and then created a film separation and a color key that the printer, advertising agency or publishing house could use to print the transparency on paper for distribution. Because the color separation and the color key were merely the means of conveying a nontaxable technical service from K & A Litho to its customers, the gross amount paid to K & A Litho was not taxable.

12 CSR 10-3.350 Movies, Records and Soundtracks

PURPOSE: This rule interprets the sales tax law as it applies to the rental of movies, records and soundtracks and interprets and applies sections 144.010, 144.020 and 144.030, RSMo.

(1) Rentals of film, records or any type of sound or picture transcription are exempt from tax. Sales of those items are not exempt even if sold to a place of amusement, entertainment or recreation which charges a sales tax for admission.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 030-50 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

Universal Images v. Missouri Department of Revenue, 608 SW2d 417 (Mo. banc 1980). Filmed commercials shown in theaters were subject to tax imposed on privilege of storing, using or consuming any article of tangible personal property within state, where taxpayer purchased films from out-of-state vendors and they remained property of taxpayer and were stored in state during their useful life during which taxpayer charged advertisers fee for use of films; but charges for out-of-state laboratory services which were not incidental to production of film were not subject to the tax.

12 CSR 10-3.352 Recording Devices

PURPOSE: This rule interprets the sales tax law as it applies to persons selling recording devices.

(1) Persons selling recording machines, cameras, screens or other machinery and equipment to broadcasting stations or theaters are subject to the sales tax on the gross receipts from all these sales.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 030-51 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.354 Pipeline Pumping Equipment

PURPOSE: This rule interprets the sales tax law as it applies to sellers of pipeline pumping equipment.

(1) Sales of machinery and equipment used to propel products by pipelines engaged as common carriers are exempt. The exemption does not apply to contract carriers or to persons propelling their own products. All other machinery and equipment such as the lines, connecting, accessory and communication equipment such as fuel tanks to provide fuel for the engines; manifolds used to connect pumping equipment to the main lines and

monitoring equipment are subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 030-52 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.356 Railroad Rolling Stock

PURPOSE: This rule interprets the sales tax law as it applies to railroad rolling stock.

(1) Railroad rolling stock is exempt provided that it is used in transporting persons or property in interstate commerce. Railroad rolling stock for use in intrastate commerce is not exempt.

(2) Example 1: A person selling a manufacturer boxcar for the purpose of transporting properties to its warehousing facility outside Missouri, would not be subject to the sales tax on the receipts from these sales.

(3) Example 2: A person selling a switch engine to be used to move railroad cars around the yard, and used solely in the state, is subject to the sales tax on the receipts from the sale.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 030-54 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.358 Electrical Energy

PURPOSE: This rule interprets the sales tax law as it applies to taxable sales of electrical energy.

(1) Sales tax applies to the sale of electrical energy for all commercial or industrial consumption unless the use qualifies for exemption. Exemption would be applicable if the user was consuming electricity in the actual primary manufacturing, processing, compounding, mining or producing of a product or electrical energy used in the actual secondary processing or fabricating of the product, if the total cost of the electrical energy so used exceeds ten percent (10%) of the total

cost of production, either primary or secondary, exclusive of the cost of the electrical energy so used.

(2) To qualify for the electrical energy exemption, the applicant must be engaged in manufacturing. Manufacturing is defined as a process that takes something practically unsuitable for any common use and changes it so as to adapt it to such common use. For example, a taxpayer using electricity to blast and crush rock would be engaged in manufacturing (see *Westlake Quarry & Material Co. v. Shaffner*, 451 SW2d 140 (Mo. banc 1970)). On the other hand, a taxpayer using electricity in growing plants would not be engaged in the manufacturing business (for an example of how this exemption applies, see *State ex rel. Union Electric Company v. Goldberg*, 578 SW2d 921 (Mo. banc 1979)).

(3) Cost of production means, cost of materials, labor costs, overhead expenses such as plant equipment depreciation and plant equipment insurance, plant rental and other similar expenses which are in accordance with generally accepted accounting principles and procedures and are normally included when determining cost of production. Electrical energy consumed, which is the basis of the exemption may not be included as part of the cost of production.

(4) All consumers of electrical energy who attempt to qualify for this exemption must request an electrical energy direct pay authorization application form. After this authorization is issued by the director of revenue, the recipient of same shall file, on or before the due date, a return with the director, identifying the amount of electrical energy purchased tax exempt and remit the appropriate tax on energy consumed not covered by this exemption. The director requires an annual calendar report to facilitate the collection of electrical energy direct pay sales tax.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 85 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-55 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed March 11, 1983, effective July 11, 1983.

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

Terminal Warehouses of St. Joseph, Inc. v. Department of Revenue, Case No. RV-81-0426 (A.H.C. 8/10/83). The sole issue in this case is whether petitioner was entitled to an

electrical energy exemption pursuant to section 144.030.2(12), RSMo for electrical energy used in the secondary processing of a product where the cost of the electrical energy used exceeds ten percent of the total cost of production. Petitioner was in the business of freezing and storing food. The commission found that freezing causes various changes in the chemical and physical properties of food, and that the purpose of freezing was to increase the product's longevity and preserve its nutritional value. The commission held that the taxpayer need not qualify as a manufacturer before it was entitled to claim an exemption for processing and that the freezing of food constitutes processing. Therefore, the taxpayer is entitled to the exemption.

St. Louis County Water Company v. Director of Revenue, Case Nos. RS-84-0307, RS-85-0444 and RS-84-0514 (A.H.C. 6/30/86). The Administrative Hearing Commission found that the petitioner qualified for the manufacturing exemption under 144.030.2(12), RSMo. In *Jackson Excavating v. Administrative Hearing Commission*, 646 SW2d 48 (Mo. 1983), the supreme court stated the test for manufacturing: a transformation of a raw material into a salable new product which has an intrinsic and merchantable value in a form capable of new uses. The commission noted that pressurization was necessary to maintain purification: both the Missouri Public Service Commission and the Department of Natural Resources require minimum pressure to be maintained to meet consumer needs and to prevent contamination such as backflow and seepage. Further, the commission noted that the petitioner had to produce a product capable of performing work such as activating sprinklers, toilets and showers. The commission found that pressurization was "an integral continuous and indivisible portion of the petitioner's business" and part of the purification process constituting manufacturing.

Monsanto Company v. Director of Revenue, Case No. RS-84-0332 (A.H.C. 11/29/86). The Administrative Hearing Commission disregarded the integrated plant argument and ruled that the formation of silicon rods was a separate and distinct manufacturing stage entitled to the exemption.

12 CSR 10-3.360 Electrical Energy Used in Manufacturing

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 85 Jan. 22, 1973,

effective Feb. 1, 1973. S.T. regulation 030-56 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.362 Primary and Secondary Defined

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 85 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-57 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.364 Cost of Production Defined

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 85 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-58 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

State ex rel. Union Electric Co. v. Goldberg, 578 SW2d 921 (Mo. banc 1979). Section 144.030.3(11) exempts from state sales tax "electrical energy used in the actual primary manufacture, processing, compounding, mining or producing of a product or electrical energy used in the actual secondary processing or fabricating of the product, if the percent of the total cost of production, either primary or secondary, exclusive of the cost of electrical energy so used." Appellant mining company sought a refund of taxes paid on electrical energy purchased for use in its beneficiation process. Although the cost of the electrical energy used in the beneficiation did exceed ten percent of the total cost of that process, the total cost of electrical energy used in the combined operations of mining and processing did not exceed ten percent of the total cost of production. Held, the exemption may apply to individual processes and beneficiation is a "process" in contemplation of the statute. Since the cost of electrical energy used during that process exceeded ten percent of the total cost of that process, the electrical energy used during beneficiation is exempt from state sales tax.

12 CSR 10-3.366 Authorization Required

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 85 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-59 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 1, 1980.

12 CSR 10-3.368 Air Pollution Equipment

PURPOSE: This rule interprets the sales tax law as it applies to air pollution equipment.

(1) All machinery, equipment, appliances and devices used solely for preventing, abating or monitoring air pollution and all materials and supplies solely required for the installation, construction or reconstruction of the machinery, equipment, appliances or devices are exempt, provided that the items are so certified by the director of the Department of Natural Resources (DNR).

(2) Example. A so-called scrubber device that washes and removes undesirable particles, purchased by a poultry processing plant for the purpose of reducing odors and consequently, abating air pollution and so certified by the director of DNR would not be subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. * S.T. regulation 030-60 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.370 Water Pollution

PURPOSE: This rule interprets the sales tax law as it applies to water pollution equipment.

(1) All machinery, equipment, appliances and devices used solely for preventing, abating or monitoring water pollution and all materials and supplies solely required for the installation, construction or reconstruction of the machinery, equipment, appliances or devices are exempt, provided that the items are so certified by the director of the Department of Natural Resources.

AUTHORITY: section 144.270, RSMo 1994. * S.T. regulation 030-61 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.372 Water or Air Pollution Installation Contractor

PURPOSE: This rule interprets the sales tax law as it applies to water or air pollution installation contractors.

(1) If a contractor purchases, assembles and installs tax exempt water or air pollution items, those purchases are not subject to the sales tax.

(2) If a contractor purchases tax exempt materials and supplies solely required for the installation, construction or reconstruction of tax exempt water or air pollution items, those purchases are tax exempt even if a different person or contractor sells, assembles or installs the tax exempt machinery, equipment, appliances or devices.

AUTHORITY: section 144.270, RSMo 1994. * S.T. regulation 030-62 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.374 Materials Not Exempt (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-63 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.376 Rural Water Districts

PURPOSE: This rule interprets the sales tax law as it applies to rural water districts.

(1) Persons selling tangible personal property to rural water districts are not subject to the sales tax when the tangible personal property is paid for out of the funds of the rural water district.

AUTHORITY: section 144.270, RSMo 1994. * This rule was previously filed as rule no. 3 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-64 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.378 Defining Charitable (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 040-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

World Plan Executive Counseling v. Director of Revenue, Case No. RS-79-0055 (A.H.C. 8/23/82). Taxpayer was not entitled to sales and use tax exemption for taxes associated with the construction of two transcendental meditation academies because its activities do not relieve government of the burden of providing a service which would otherwise be a governmental responsibility. Therefore, taxpayer is not a charitable organization pursuant to section 144.030.2(19), RSMo.

12 CSR 10-3.380 Operating at Public Expense (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 040-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.382 Sales Made to and by Exempt Organizations

PURPOSE: This rule interprets the sales tax law as it applies to sales made to and by exempt organizations.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) Receipts from sales to organizations which have applied for and which have been granted an exemption by the Department of Revenue may be deducted from the seller's gross receipts if the buyer delivers a copy of the exemption letter issued by the Department of Revenue to the seller and if the sale to the exempt organization in its ordinary functions are paid for out of its funds. Receipts from the sales to an exempt organization which

uses the product or service in the conduct of an unrelated trade or business may not be exempted.

(2) Sales to the following organizations are exempt from sales tax provided the organization has met the criteria for exempt status and applied for and received an exemption certificate from the Department of Revenue:

(A) Religious and charitable organizations and institutions in their religious, charitable or educational functions;

(B) Elementary and secondary schools operated at public expense in their educational functions and activities;

(C) Not-for-profit civic, social, service or fraternal organizations solely in their civic or charitable functions and activities;

(D) Eleemosynary and penal institutions and industries of the state;

(E) Any private not-for-profit institution of higher education not otherwise excluded under section 144.030.1(19), RSMo or any institution of higher education;

(F) State relief agency in the exercise of relief functions and activities; and

(G) Any private not-for-profit elementary or secondary schools not otherwise excluded.

(3) Sales by the following organizations are exempt from sales tax provided the organization has met the criteria for exempt status and applied for and received an exemption certificate from the Department of Revenue:

(A) Religious and charitable organizations and institutions in their religious, charitable or educational functions;

(B) Elementary and secondary schools operated at public expense in their educational functions and activities;

(C) Not-for-profit civic, social, service or fraternal organizations solely in their civic or charitable functions and activities; and

(D) All ticket sales made by benevolent, scientific and educational associations which are formed to foster, encourage and promote progress and improvement in the science of agriculture and in the raising and breeding of animals and by nonprofit summer theatre organizations if these organizations are exempt from federal tax under the provisions of the *Internal Revenue Code*.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 4 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

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

St. Louis Sheet Metal Joint Apprenticeship Fund v. Director of Revenue, Case No. RS-82-0424 (A.H.C. 11/16/83). A letter was issued to the petitioner, Apprenticeship Fund, by the director of revenue denying its request for an exemption from the payment of sales and use tax. The director of revenue asserted that the commission had no jurisdiction to rule on the denial of the exemption because the denial did not constitute an appealable final decision. It was the director's position that until such time as an actual assessment had been issued against the petitioner, any order issued by the commission concerning petitioner's right to an exemption would constitute a declaratory judgment, which is beyond the jurisdiction of this state's quasi-judicial bodies according to the decision in *State Tax Commission v. Administrative Hearing Commission*, 641 SW2d 69 (Mo. banc 1982). The commission rejected this argument on the grounds that the issuance of the letter denying the exemption had an actual immediate impact on the petitioner. In particular, the commission looked to 12 CSR 10-3.382 which requires sellers to receive a letter of exemption before they may treat sales as exempt. Before an assessment could be issued, both petitioner and its sellers would have to violate the director's regulation.

With respect to whether the organization was in fact exempt under section 144.030.2(19), 144.030.2(20) or 144.030.2(22), RSMo, the commission found against the taxpayer. Those paragraphs provide an exemption for elementary and secondary schools and institutions of higher education. The commission found that the apprenticeship program was none of these.

12 CSR 10-3.384 Sales by Religious, Charitable, Civic, Social, Service and Fraternal Organizations at Community Events
(Rescinded February 11, 1985)

AUTHORITY: section 144.270, RSMo 1978. Original rule filed Jan. 15, 1982, effective May 13, 1982. Amended: Filed May 20, 1983, effective Oct. 13, 1983. Rescinded: Filed Oct. 15, 1984, effective Feb. 11, 1985.

12 CSR 10-3.386 Application for Exemption
(Rescinded February 11, 1985)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 040-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

Rescinded: Filed Oct. 15, 1984, effective Feb. 11, 1985.

St. Louis Sheet Metal Joint Apprenticeship Fund v. Director of Revenue, Case No. RS-82-0424 (A.H.C. 11/16/83). A letter was issued to the petitioner, Apprenticeship Fund, by the director of revenue denying its request for an exemption from the payment of sales and use tax. The director of revenue asserted that the commission had no jurisdiction to rule on the denial of the exemption because the denial did not constitute an appealable final decision. It was the director's position that until such time as an actual assessment had been issued against the petitioner, any order issued by the commission concerning petitioner's right to an exemption would constitute a declaratory judgment, which is beyond the jurisdiction of this state's quasi-judicial bodies according to the decision in *State Tax Commission v. Administrative Hearing Commission*, 641 SW2d 69 (Mo. banc 1982). The commission rejected this argument on the grounds that the issuance of the letter denying the exemption had an actual immediate impact on the petitioner. In particular, the commission looked to 12 CSR 10-3.382 which requires sellers to receive a letter of exemption before they may treat sales as exempt. Before an assessment could be issued, both petitioner and its sellers would have to violate the director's regulation.

With respect to whether the organization was in fact exempt under section 144.030.2(19), 144.030.2(20) or 144.030.2(22), RSMo, the commission found against the taxpayer. Those paragraphs provide an exemption for elementary and secondary schools and institutions of higher education. The commission found that the apprenticeship program was none of these.

12 CSR 10-3.388 Construction Materials

PURPOSE: This rule interprets the sales tax law as it applies to sales of construction materials to exempt organizations and contractors for exempt organizations.

(1) Purchases of construction materials by an exempt organization for use in building a facility to be used by the organization in the conduct of regular activities of the organization are not subject to the sales tax provided a copy of the letter of exemption is furnished to the suppliers of such materials by the organization and the purchases are paid for directly from funds of the organization.

(2) Sales to contractors who purchase construction materials and supplies to fulfill their contracts for exempt organizations are not subject to the sales tax provided the exempt organizations furnish a copy of their current exemption letter and a completed project exemption certificate to the contractor in accordance with sections (3)–(8) of this rule. The exempt organization may monitor all supplies purchased, used and consumed in fulfilling the project.

(3) A project exemption certificate shall include, but may not be limited to, the following:

(A) The exempt entity's name, address, Missouri Tax Identification Number and signature of authorized representative of the exempt entity;

(B) The project location, description and unique identification number;

(C) Date the contract is entered into;

(D) The estimated project completion date; and

(E) The certificate expiration date.

(4) Contractors must provide a copy of the exempt organization's exemption letter and the project exemption certificate to suppliers when purchasing materials and supplies to be consumed in the project.

(5) Contractors are not exempt from sales tax on the purchase of machinery, equipment or tools used in fulfilling these contracts.

(6) Suppliers shall render to the contractor invoices bearing the name of the exempt organization and the project identification number. These invoices must be retained by the purchasing contractor for a period of five (5) years.

(7) Contractors must file a sales tax return for all excess resalable supplies or materials which the contractor purchased for the project but which were not returned to the supplier. This return must be filed and paid not later than the due date of the contractor's sales tax return following the month in which the contractor determines that the materials were not used in the project.

(8) An exempt organization that fails to revise the project exemption certificate expiration date as necessary to complete any work required by the contract will be liable for any sales tax due as determined by an audit of the contractor.

*AUTHORITY: section 144.270, RSMo 1994. * This rule was previously filed as rule no. 18 Jan. 22, 1973, effective Feb. 1, 1973. S.T.*

regulation 040-6 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective April 30, 1995.

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

Becker Electric Company, Inc. v. Director of Revenue, 749 SW2d 403 (Mo. banc 1988). *A purchaser was determined to be the person who acquires title to, or ownership of, tangible personal property, or to whom is tendered services, in exchange for a valuable consideration. Becker was not the purchaser here because the materials were billed to the Housing Authority and the consideration was paid by the Housing Authority. If the materials are billed to the exempt organization and paid for from funds of the exempt organization, then the purchase is exempt if the materials are used in furtherance of the exempt purpose of the organization.*

12 CSR 10-3.390 Sales Made by and to Elementary and Secondary Schools
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 6 Jan. 22, 1973, effective Feb. 1, 1973. S. T. regulation 040-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.392 Defining Civic
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 040-8 was last Dec. 31, 1975; effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.394 Nonprofit Organization
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 4 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-9 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.396 Social and Fraternal Organizations

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 8 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-10 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.398 Auxiliary Organizations
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 4 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulated 040-11 was 1st filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.400 Parent-Teacher Associations

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 040-12 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.402 Boy Scouts and Girl Scouts

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 9 Jun. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-13 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.404 Cafeterias and Dining Halls

PURPOSE: This rule interprets the sales tax law as it applies to cafeterias and dining halls.

(1) Tax exempt schools, charitable institutions, colleges and universities operating lunch rooms, cafeterias, dining rooms or any other facilities where meals are provided to students are not in the business of selling regularly to the public and are not subject to the sales tax. This exemption does not apply to food, drink and snacks sold at student unions and the like, where the items are equally available to and sold to the public.



AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule nos. 5 and 10 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-14 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.406 Caterers or Concessionaires

PURPOSE: This rule interprets the sales tax law as it applies to caterers or concessionaires.

(1) Caterers or concessionaires leasing eating establishments on the premises of any tax exempt organization are subject to the sales tax on all sales.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 10, Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-15 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

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

12 CSR 10-3.408 Educational Institution's Sales

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 5 Jun. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-16 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.410 Junior Colleges

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 040-17 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.412 Higher Education

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 5 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-10 was last filed Dec. 31, 1975, effective Jan.

10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.414 Yearbook Sales

PURPOSE: This rule interprets the sales tax law as it applies to yearbook sales.

(1) Publishers of school yearbooks are subject to the sales tax on the gross receipts from all sales of yearbooks to students either directly or through schools. Publishers selling yearbooks to tax exempt schools are not subject to the sales tax when the yearbooks are paid for from school funds.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 6 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-19 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.416 Eleemosynary Institutions Defined

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 040-20 was last filed Dec. 31, 1975, effective Jan. 10, 1979. Rescinded: Filed Aug. 12, 1980, effective Dec. 11, 1980.

12 CSR 10-3.418 Fraternities and Sororities

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo, 1978. Previously filed as rule no. 7 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-21 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, Dec. 11, 1980.

12 CSR 10-3.420 YMCA and YWCA Organizations

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo, 1978. Previously filed as rule no. 8 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040.22 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1990, effective Dec. 11, 1980.

12 CSR 10-3.422 Canteens and Gift Shops

PURPOSE: This rule interprets the sales tax law as it applies to canteens and gift shops.

(1) Canteens and gift shops operated by not-for-profit hospitals or their auxiliary organizations who make available certain common necessary items for purchase by patients or families visiting the patients and use all of the proceeds for the patients' recreational and rehabilitation purposes are not subject to the sales tax.

(2) If a canteen or gift shop is generally open and accessible to the general public, its gross receipts are subject to the sales tax. If the canteen or gift shop is operated for the benefit of patients, their visitors and employees of the hospital, its gross receipts would not be subject to sales tax; however, a sales tax exemption letter must be applied for and obtained.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 4 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-23 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

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

12 CSR 10-3.424 Lease and Rental

(Rescinded December 11, 1976)

AUTHORITY: section 144.270 RSMo 1969. Rule filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Sept. 14, 1976, effective Dec. 11, 1976.

12 CSR 10-3.426 Sales of Aircraft

PURPOSE: This rule interprets the sales tax law as it applies to sales of aircraft.

(1) Sales of aircraft to common carriers for storage or for use in interstate commerce are not subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 040-25 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

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

12 CSR 10-3.428 Cigarette and Other Tobacco Products Sales

PURPOSE: This rule interprets the sales tax law as it applies to cigarette and other tobacco product sales and interprets and applies section 144.030, RSMo.

(1) Sales tax does not apply to that portion of the price charged for cigarettes which represents Missouri cigarette tax. *ITT Canteen Corporation v. Spradling*, 526 SW2d 11 (Mo. 1975).

(2) Sellers of cigarettes should exclude from their gross receipts the amount of Missouri cigarette taxes collected and they are not allowed to charge sales tax to their customers on the Missouri cigarette tax portion of the price charged for cigarettes.

(3) If the local ordinance imposing the city or county cigarette tax imposes the tax on the seller, the tax is considered as being part of the selling price and is subject to sales tax. If the local ordinance imposes the cigarette tax on the purchaser, however, it is not considered part of the selling price and sales tax would not apply to that portion of the price charged for the cigarettes.

(4) Sellers of other tobacco products must include in their gross receipts the amount of Missouri other tobacco products taxes collected. Sellers must charge sales tax to their customers on the entire sales price of the other tobacco products including the Missouri other tobacco products tax portion of the price. Other tobacco products include, but are not limited to, cigarette papers, cigars, smokeless tobacco, smoking tobacco, or other form of tobacco products or products made with tobacco substitute.

(5) Sales tax collected illegally or erroneously overcharged or overcollected and remitted to the state by the seller on the sale of cigarettes and other tobacco products shall not be refunded. This provision shall apply to all tax periods beginning on or after January 1, 1995.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 87 Jan. 31, 1974, effective Feb. 15, 1974. S.T. regulation 050-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec.*

26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995.

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

Hewitt Well Drilling v. Director of Revenue, 847 SW2d 795 (Mo. banc 1993). *Penalty assessment for willful neglect to file return is appropriate unless taxpayer can show good faith belief that transaction was not subject to tax.*

12 CSR 10-3.430 Purchaser to Pay the Tax (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 060-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1990.

12 CSR 10-3.431 Handicraft Items Made by Senior Citizens

PURPOSE: This rule interprets the sales tax law as it applies to handicraft items made and sold by senior citizens, and interprets and applies section 144.030.2(24), RSMo.

(1) Handicraft items made by the seller or his/her spouse are not taxable on the gross receipts from these sales if the seller or his/her spouse is at least sixty-five (65) years of age and if the total gross proceeds from the sales do not constitute a majority of the annual gross income of the seller.

(2) The seller is required to sign a notarized affidavit provided by the Department of Revenue that s/he meets the requirements stated in section (1). Upon receipt of the affidavit, the seller will receive an exemption certificate which is to be posted when making sales.

(3) The seller is required to pay the sales tax at the time of purchase on all supplies which become an ingredient of the finished product.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

12 CSR 10-3.432 Sale of Prescription Drugs

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 69 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 060-2 was last filed Oct. 28, 1973, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.434 Motor Vehicle and Trailer Defined

PURPOSE: This rule defines the terms motor vehicle and trailer for purposes of the sales tax law and interprets and applies sections 144.070 and 301.010, RSMo.

(1) For purposes of sales tax, the terms motor vehicle and trailer have the same meaning as those terms under the titling and licensing laws of Missouri.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 89 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 070-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

Lake & Trail Sports Center v. Director of Revenue, 631 SW2d 339 (Mo. banc 1982). *"Dirt bikes" which are in all respects motorcycles, except for lack of lights, were motor vehicles primarily designed for use on highways and thus seller was not required to remit sales tax on sales of dirt bikes.*

12 CSR 10-3.436 Manufactured Homes

PURPOSE: This rule interprets the sales tax law as it applies to mobile homes and interprets and applies section 144.010 and Chapter 700, RSMo.

(1) The retail sale of a new manufactured home is deemed to be the sale of forty percent (40%) service and sixty percent (60%) tangible personal property. The sixty percent (60%) portion of the purchase price representing the purchase of tangible personal property is subject to Missouri sales tax. Sales of manufactured homes which are permanently affixed to real estate are deemed to be sales of tangible personal property unless and until the owner has complied with the provisions of section 700.111, RSMo. The sale of a used manufactured home upon which Missouri sales tax has already been paid is not subject to Missouri sales tax. The

sale of a used manufactured home upon which Missouri sales tax has not been previously paid, is subject to tax on one hundred percent (100%) of the purchase price unless otherwise exempt.

(2) A manufactured home is any factory-built structure equipped with the necessary service connections and made so as to be readily moveable on its own running gear which is designed to be used as a dwelling unit with or without permanent foundation.

(3) Sellers of new manufactured homes are subject to sales tax on sixty percent (60%) of the gross receipts from these sales. The purchaser should obtain a signed receipt confirming that tax has been paid and bring the receipt with him/her when making application for license, title or registration.

(4) A purchaser wishing to title a new manufactured home must produce a signed receipt that the sales tax has been paid on the purchase price of the new manufactured home at the time s/he titles the home. Upon failure of the purchaser to present a signed receipt, the purchaser must remit the sales tax due on the new manufactured home prior to title being issued.

(5) A seller, for purposes of collecting the sales tax on new manufactured homes, is the person selling or transferring the new manufactured home to the purchaser. The power to designate who is to obtain title to the new manufactured home or to physically transfer the property is enough to categorize the person as the seller of the new manufactured home. Agents, brokers and others may be deemed to be sellers of the new manufactured home.

(6) The transfer of the ownership of or title to a manufactured home involving the assumption of the obligation to pay for the home is considered a sale at retail of the manufactured home subject to Missouri sales tax unless Missouri sales tax has been previously paid. As between a dealer and a financial institution, the seller, for purposes of collecting and remitting the sales tax, is deemed to be the person who finds the new buyer to effectuate the new sale.

*AUTHORITY: section 144.270, RSMo 1994. * This rule was previously filed as rule no. 89 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 070-1A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Jan. 25, 1984, effective May 11, 1984. Emergency*

amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995.

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

12 CSR 10-3.438 Tangible Personal Property Mounted on Motor Vehicles

PURPOSE: This rule interprets the sales tax law as it applies to the sale of tangible personal property mounted on motor vehicles and interprets and applies section 144.030, RSMo.

(1) The person selling tangible personal property to be mounted on or installed in a motor vehicle or trailer is subject to sales tax unless s/he receives a validly executed resale exemption certificate.

(2) The purchaser of a motor vehicle or trailer is required to pay sales tax to the Department of Revenue at the time of titling and licensing and the purchase price includes the total amount paid to the seller for the vehicle including all tangible personal property mounted on or installed in the vehicle.

(3) Sales of drilling rigs mounted on motor vehicles or trailers are not subject to the sales tax if the drilling rigs are purchased to be used in a mining operation. Exploratory drilling and drilling for oil, water or gas are not included within the definition of mining (see *Rotary Drilling Supply, Inc. v. Director of Revenue*, 662 SW2d 496 (Mo. banc 1983)).

(4) Example 1: Mr. Jones purchases a car at retail from a registered dealer, containing optional equipment extras such as radio, carpets and radial tires. Mr. Jones is subject to sales tax on the full amount paid for the vehicle, including options, and he is required to pay the tax to the Department of Revenue at the time of titling and licensing. The dealer is not subject to the sales tax on this transaction.

(5) Example 2: Mr. Smith runs a television and radio shop and a customer comes in to purchase a citizen's band radio and related equipment to be installed in the vehicle. Mr. Smith is subject to sales tax on the entire gross receipts unless presented with a validly executed exemption certificate, as would be the case, for instance, if the customer was a

registered used car dealer who was readying the vehicle for sale.

(6) Example 3: Welle Equipment Company sells, mounts and installs a well-drilling rig on a truck. Welle Equipment Company is subject to sales tax on the entire gross receipts unless the customer executes a resale exemption certificate showing its sales tax license number or its registered motor vehicle dealer's license number.

(7) Example 4: Welle Equipment Company, a registered motor vehicle dealer, owns a truck. Welle Equipment purchases and mounts on the truck a well-drilling rig and sells the motor vehicle well-drilling rig as a unit to Mr. Peters. Welle Equipment should purchase the well-drilling rig under a resale exemption certificate showing its registered dealer's license number and should record the full sales price on the title document and bill of sale delivered to Mr. Peters. Welle Equipment is not subject to sales tax and Mr. Peters is required to pay tax to the Department of Revenue on the full purchase price of the entire unit at the time of making application for title. Welle Equipment is required to collect sales tax if the motor vehicle laws do not require that the unit be titled and licensed.

(8) Example 5: Mr. Peters sells the unit to Mr. Allen in a private sale. Mr. Allen will be subject to the highway use tax at the time of titling on the price paid for the entire unit.

*AUTHORITY: section 144.270, RSMo 1994. * S.T. regulation 070-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

Rotary Drilling Supply, Inc. v. Director of Revenue, 662 SW2d 496 (Mo. banc 1983). *Petitioner contended that its sales of drilling rigs were exempt from sales tax under section 144.030.2(4), RSMo on the grounds that they were purchased from petitioner for the purpose of expanding or establishing mining plants in this state. Petitioner had failed to obtain exemption certificates from its purchasers and, therefore, it would be liable for uncollected tax. The court refused to recognize water-well drilling as a form of mining. The use of rigs to drill water wells for any purpose or exploratory holes would not constitute mining within the exemption requirement. Rotary Drilling Supply, Inc. v. Director of Revenue*, 662 SW2d 496 (Mo. banc

1983), the court held the use of rigs to drill water wells or exploratory holes would not constitute "mining" within the exemption requirements. The rigs and equipment used were subject to sales tax.

12 CSR 10-3.440 Automobiles (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 36 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 070-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

Op. Atty. Gen. No. 76, Reiss (10-27-76). The Missouri director of revenue is not authorized to impose penalties and/or interest in addition to sales or use tax as provided in the sales tax statutes, sections 144.010–144.510, RSMo 1969, on those individuals who fail to apply for a certificate of ownership on a newly acquired automobile within 30 days from the date of purchase, as required by section 301.190, RSMo 1969. The only penalty collectible, if the certificate of ownership is not applied for within 30 days from the date of purchase, is that provided for in section 301.190.3, RSMo, that is a penalty of five dollars for each month or fraction of a month of delinquency not to exceed twenty-five dollars.

Op. Atty. Gen. No. 221, Spradling (11-3-75). The director of revenue does not have the authority to refund the sales or use tax paid by a purchaser of an automobile at the time of titling and registration when the sale to which the tax applied is subsequently set aside because of the fact that the vehicle has been returned to the seller.

12 CSR 10-3.442 Automotive Demonstrators (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1970. S.T. regulation 070-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.443 Motor Vehicle Leasing Divisions

PURPOSE: This rule establishes procedures for the proper collection and allocation of state, city and county taxes with respect to divisions of companies operating as motor

vehicle leasing companies and interprets and applies section 144.070, RSMo.

(1) Any motor vehicle, which is leased or rented as the result of a contract executed in this state, shall be presumed to be domiciled in this state and domiciled within the city and county where the business office that executed the contract lies.

(2) Each company operating a motor vehicle leasing division within this state, with its application, annually shall provide the director of revenue with a list of all its business locations within this state at which a rental or leasing contract may be executed. The list shall contain the proper mailing address of the business location along with the name of the city and county where the business is located and the phone number of the locations. The list also shall contain a designation of the mailing address of the principal place of business within this state.

(3) Each company operating within this state shall maintain, at its principal place of business within this state, a current listing of all places of business within the state where a contract for the rental or leasing of a motor vehicle may occur.

(4) Each motor vehicle leasing division within this state shall keep on file, at its principal place of business within this state, a current list of all of its motor vehicles domiciled in this state.

(5) The authority to operate shall be for a period of one (1) year from the date of issuance of the certificate by the director.

AUTHORITY: sections 144.070.7. and 144.270, RSMo 1994.* Original rule filed May 5, 1978, effective Sept. 12, 1978. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

*Original authority: 144.070.7., RSMo 1939, amended 1941, 1943, 1945, 1947, 1951, 1961, 1974, 1975, 1977, 1985 and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.

12 CSR 10-3.444 Collection of Tax on Vehicles

PURPOSE: This rule interprets the sales tax law as it applies to the collection and payment of sales tax on motor vehicles, over-the-road trailers and mobile homes and interprets and applies sections 144.010 and 144.070, RSMo.

(1) All sales tax on motor vehicles or trailers, with the exception of motor vehicles or trailers leased or rented by a motor vehicle leasing company holding a valid permit, is collected from the purchaser by the Department of Revenue, Motor Vehicle Bureau. Sales of mobile homes, however, are subject to the sales tax at the time of sale. Sellers of mobile homes must submit sales tax collected to the Department of Revenue, Business Tax Bureau.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 070-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.446 Motor Vehicle Leasing Companies

PURPOSE: This rule interprets the sales tax law as it applies to the motor vehicle leasing option and interprets and applies section 144.070.5.–144.070.6., RSMo.

(1) A person who exercises the option of paying sales tax as a motor vehicle leasing company is subject to the sales tax on the total gross receipts from all leased or rented motor vehicles and trailers.

(2) Vehicles which are not intended to be leased or rented are subject to the sales tax at the time they are registered with the Motor Vehicle Bureau. Persons exercising the option of acting as a motor vehicle leasing company must state at the time the vehicles are registered, whether or not the motor vehicles will be leased or rented.

(3) Any person engaged in the business of renting or leasing a motor vehicle or trailer who has exercised the option of paying the sales tax as a leasing company must renew its permit to operate as a motor vehicle leasing company on a calendar-year basis.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 070-6 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.448 Annual Permit Renewal (Rescinded December 11, 1980)

AUTHORITY: section 144.270 RSMo 1978. S.T. regulation 07-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.452 Mailing of Returns
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 080-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.454 No Return, No Excuse—Return Required Even if No Sales Made
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 080-2A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.456 Calendar Quarter Defined
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 080-3 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.458 Aggregate Amount Defined
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 080-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.460 Return Required
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 080-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Emergency amendment filed Dec. 15, 1999, effective Jan. 1, 2000, expired June 28, 2000. Rescinded:

Filed March 28, 2001, effective Sept. 30, 2001.

Falley's Food-4-Less v. Director of Revenue, Case No. RS-83-0010 (A.H.C. 8/3/87). Petitioner, a retail seller, filed his sales tax returns for October 1981 and August 1982 via the United States mail. The postmark dates on these returns were November 23, 1981 and September 22, 1982, respectively. Respondent assessed penalties for late filing on these periods.

The commission held since the amount of tax imposed on petitioner was in excess of \$250 for the first or second month of a calendar quarter, the payments were due by the twentieth day of the succeeding month. Petitioner was required by statute, not by the director, to file monthly instead of quarterly returns, therefore 144.080.2, RSMo applies rather than 144.090, RSMo.

12 CSR 10-3.462 Annual Filing
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 080-6 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.464 Tax Includes
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 080-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.466 Revocation Orders

PURPOSE: This rule interprets the sales tax law as it applies to revocation orders.

(1) A taxpayer has ten (10) days from the date of a Default Notice to pay the delinquent taxes for the period that is in default. Failure to pay that delinquency will result in the issuance of a Revocation Order. When a Revocation Order is issued, the Missouri Retail Sales Tax License is deemed null and void at that point in time. Before the license can be reissued or reinstated the taxpayer must complete a new Missouri Tax Registration Application, post a sales/use tax bond (cash bond, surety bond or irrevocable letter of credit), file all returns due and pay all

delinquencies on the entire account in full. This action does not preclude the Department of Revenue from pursuing collection of any additional taxes found due at a later date.

(A) Example: A business receives a Default Notice in the amount of four hundred fifty dollars (\$450) including penalty and interest for the filing period of September, 1985. The business fails to pay this amount within ten (10) days from the date of the Default Notice. Therefore, a Revocation Order is issued. The business owes additional taxes for the filing periods October, November and December 1985 in the amount of ten thousand dollars (\$10,000). The business also failed to file returns for the period of January, February and March of 1986. Before the license can be issued or reinstated the taxpayer must pay the ten thousand dollars (\$10,000) for the October, November and December 1985 file periods, the four hundred fifty dollars (\$450) for the September 1985 file period and file and pay the returns for the January, February and March 1986 filing periods and pay applicable penalties and interest for all delinquent periods. The taxpayer must also complete a Missouri Tax Registration Application and post the required sales/use tax bond.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 083-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Jan. 15, 1987, effective May 11, 1987.

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

12 CSR 10-3.468 Retail Sales Tax License Necessary

PURPOSE: This rule interprets the sales tax law as it applies to obtaining a retail sales tax license.

(1) Persons going into business where goods are sold at retail must have in their possession a retail sales license before beginning business. The retail sales license is necessary to obtain any city or county occupation license or any state license which is required for conducting business.

(2) If a business' sales/use tax license is revoked by the Missouri Department of Revenue and that business continues to make retail sales, it will be assessed up to a five hundred dollar (\$500) penalty for the first day of operation after the revocation and one hundred dollars (\$100) a day after that, not to

exceed ten thousand dollars (\$10,000). Day of operation is any day in which a retail sale is made.

(A) Example 1: Business XYZ's sales tax license is revoked by the Department of Revenue for failure to pay sales tax due. The license is revoked at 12:00 p.m. on March 23. Business XYZ continues to operate the rest of the day. Business XYZ will be assessed up to a five hundred dollar (\$500) penalty for doing business after its sales tax license was revoked.

(B) Example 2: Business XYZ's sales tax license is revoked for failure to pay sales tax delinquencies. Business XYZ continues to operate for the next ten (10) days, however, two (2) of these days are Sundays and business XYZ is not open on Sunday. Business XYZ will be assessed up to a five hundred dollar (\$500) penalty for the first day plus one hundred dollars (\$100) a day for each additional day it was open for a total of one thousand two hundred dollars (\$1,200).

(C) Example 3: Business XYZ's sales tax license is revoked for failure to pay sales tax due. Business XYZ continues to operate for a period of six (6) months after that. Business XYZ will be assessed a penalty of ten thousand dollars (\$10,000).

*AUTHORITY: section 144.270, RSMo 1994. * S.T. regulation 083-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed June 22, 1987, effective Oct. 25, 1987.*

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

12 CSR 10-3.470 Consumer Cooperatives

PURPOSE: This rule interprets the sales tax law as it applies to consumer cooperatives.

(1) Consumer cooperatives which purchase goods in quantity and maintain an inventory are required to obtain a retail license to collect and remit the sales tax from the members. They may purchase the goods tax exempt by issuing an exemption certificate to their suppliers.

(2) Consumer cooperatives which take orders from the members prior to purchasing the goods in bulk to obtain a discount and do not maintain an inventory are required to pay the tax at the time of purchase.

*AUTHORITY: section 144.270, RSMo 1994. * S.T. regulation 083-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980,*

effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

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

12 CSR 10-3.471 Type of Bond

(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.472 General Bond Examples

(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 087-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Feb. 9, 1983, effective May 12, 1983. Amended: Filed Oct. 15, 1984, effective Feb. 11, 1985. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.474 Computing a Bond

(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 087-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Oct. 15, 1984, effective Feb. 11, 1985. Amended: Filed June 12, 1987, effective Oct. 25, 1987. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.476 Replacing or Applying for Return of Bond

(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 087-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Feb. 9, 1983, effective May 12, 1983. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.478 Bond Descriptions

(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 087-4 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.479 Replacement of Bonds Issued by Suspended Surety Companies

(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Nov. 3, 1986, effective Feb. 12, 1987. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.480 Applicant Defined

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 087-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.482 Filing

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulations 090-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.484 Returns Required Even if No Sales Made

(Rescinded January 12, 1985)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 100-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Sept. 7, 1984, effective Jan. 12, 1985.

12 CSR 10-3.486 Confidential Nature of Tax Data

PURPOSE: This rule provides that the Department of Revenue must comply with the confidentiality provisions in section 32.057, RSMo.

(1) Information submitted by a taxpayer to the Department of Revenue or obtained by the



Department of Revenue from the taxing officials of other jurisdictions is confidential under section 32.057, RSMo.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 120-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.488 Letter of Authorization
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 121-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.490 Misuse of Sales Tax Data by Cities

PURPOSE: This rule interprets the sales tax law as it applies to the misuse of sales tax data by cities.

(1) Any city which obtains confidential sales tax data from the Department of Revenue as a result of its audit of its city sales tax revenues and who uses the information contrary to the confidentiality laws of Missouri may have its future access to this data terminated.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 122-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.492 General Examples
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 130-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.494 Allowance for Defective Merchandise
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 130-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980,

effective Jan. 1, 1981. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.496 Seller Timely Payment Discount

PURPOSE: This rule illustrates when a seller is entitled to the timely payment discount.

(1) From every remittance of tax made on or before the due date as required, the seller is entitled to deduct and retain an amount equal to two percent (2%) for timely payment. Note: A purchaser is not entitled to this deduction.

(2) If the time for payment of the tax has been extended upon proper application to the Department of Revenue, the timely payment discount is allowed if the payment is made within the extension period granted.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 140-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.498 Seller Retains Collection From Purchaser

PURPOSE: This rule provides when a seller may retain the difference between the amount of tax actually owed and the amount of tax collected by him/her under the bracket system.

(1) The amount of tax reimbursement collection made by a seller from a purchaser under the bracket system may be retained by the seller regardless of whether those collections are less than, equal to or greater than the seller's tax liability on the return.

(2) Amounts collected by the seller from the purchaser under the bracket system are not includable in the seller's gross receipts to the extent that the collections are authorized under the bracket system and are separately stated or charged to the purchaser.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 140-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.500 Successor Liability

PURPOSE: This rule interprets the sales tax law as it applies to a person purchasing a business.

(1) Every person purchasing a business or stock of goods immediately shall notify the director of revenue of the business name, owner's name, date of purchase and type of business or stock of goods.

(2) All successors/purchasers shall withhold a sufficient amount of the purchase money to cover taxes, interest or penalties due and unpaid by all former owners or predecessors, whether immediate or not, until the former owners or predecessors produce a receipt from the director of revenue showing that they have been paid or a certificate stating that no taxes are due; otherwise, the successor/purchaser shall become personally liable for the unpaid tax, penalty and interest accrued.

(3) Successor/purchaser refers to any "person" as defined in section 144.010(5), RSMo who, directly or indirectly, purchases or succeeds to the business or portions of the business or the whole or any part of the stock of goods, wares, merchandise or fixtures or any interest of a taxpayer quitting, selling out, exchanging or otherwise disposing of his/her business.

(4) The purchase money required to be withheld is not limited to actual cash transferring directly to the seller but refers to any purchase consideration flowing directly or indirectly through intermediate parties or otherwise to a seller or predecessor.

(5) To withhold does not necessarily mean having physical assets in hand but means dealing with the purchase consideration in a manner as to deny a seller the benefit of the purchase consideration and to make it available to the state for the satisfaction of the tax liability.

(6) Assignments for the benefit of creditors, foreclosures of mortgages, sales by a trustee in bankruptcy, repossessions by landlords after defaults on leases and probate estate liquidation sales give rise to successor liability only when the previous owner receives purchase money from the transfer or sale. Any purchaser subsequent to one (1) of the previously listed exempt transfers would be subject to successor liability if purchase money from this subsequent purchase flows through to the original tax debtor.

(7) Example: A former owner of a motel leaves an accrued sales/use tax liability of eighteen thousand dollars (\$18,000) on the business. Upon default of loan payments, the financial institution attempted to foreclose upon the business but settled out of court. A taxpayer subsequently purchases the same motel from the financial institution and the former owner without receiving from the financial institution 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 taxpayer is personally liable as successor for the unpaid tax, penalty and interest to date on the motel (see *James R. Bates d/b/a The Manor Inn v. Director of Revenue*, A.H.C. Case No. RS-81-0298 (March, 1984)).

(8) All purchasers have a duty to discover whether taxes are due and unpaid by any former owners or predecessors, whether immediate or not and ignorance will not relieve a purchaser from successor tax liability. 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 successor tax liability.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 150-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

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

James R. Bates, d/b/a The Manor Inn, Successor v. Director of Revenue, 691 SW2d 273 (Mo. banc 1985). This is a case of first impression interpreting the successor liability sales tax statute, section 144.150, RSMo.

The owner/operator, J. Douglas Cassity, accrued a sales tax liability to the state of Missouri. The same owner/operator defaulted on a first deed of trust to the Carney family, the prior owners. Great Southern Savings & Loan, to protect its junior deed of trust, purchased The Manor Inn at a foreclosure sale, applying the payment to satisfy the first deed of trust and using the balance to reduce its junior deed of trust. In a declaratory judgment proceeding, Cassity challenged the foreclosure sale and Great Southern Savings & Loan joined challenging the amount of the attorney's fee. While the declaratory suit was pending, James R. Bates negotiated the purchase of the same business. Great Southern and Bates entered into a loan agreement

whereby Bates executed a promissory note for \$975,000, secured by a deed of trust, to Great Southern and Great Southern quitclaimed its interest in the realty to Bates and provided a bill of sale for the personal property. Simultaneously, Cassity quitclaimed his interest in the realty and provided a bill of sale for the personal property to Bates in consideration for \$3000 in gemstones from Bates.

The issue is whether James R. Bates was liable as a successor for the delinquent sales tax liability of the former owner, Cassity.

The Missouri Supreme Court held that "to be a successor one must be a purchaser of the business property in question." The derivative tax liability follows the assets purchased and is not extinguished in a foreclosure. The court distinguished cases cited by the appellant which involved either a court-appointed receiver in bankruptcy or a lessor's reacquisition of possession. The court held that Bates was a successor regardless of from whom he purchased the property. If Bates purchased from Cassity, he was an immediate successor. If Bates purchased from Great Southern, who purchased from Cassity, Bates was still a successor because the statute was not limited to immediate successors.

The court also noted that the term "purchase money" within the context of section 144.150, RSMo is not limited to cash transactions but is merely "descriptive of 'the action to be taken by the person or business entity on whom the duty has been imposed'"

12 CSR 10-3.502 Successor Determination (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1979. S.T. regulation 150-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.504 Extensions Granted

PURPOSE: This rule interprets the sales tax law as it applies to extensions granted for payment of the tax.

(1) The time for filing a return or for payment of the tax, or both, may be extended upon proper application to the department prior to the due date.

(2) An approved extension of time for filing a return does not extend the time for payment of the tax.

(3) An approved extension of time for payment of the tax does not extend the time for filing the return.

(4) An approved extension of time for paying the tax will stop the interest charges during the extension period.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 160-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.506 Determination of Timeliness

PURPOSE: This rule interprets the sales tax law as it applies to the determination of timeliness.

(1) It is the taxpayer's responsibility to see that a return, payment or other document required to be filed with or made to the Department of Revenue is received by the department.

(2) If any return, payment or document required to be filed within a prescribed period or on or before a prescribed date, after that period or date, is delivered by United States mail to the director of revenue or the officer or person with which or with whom that document is required to be filed or payment made, then the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date determined with regard to any extension granted and only if that document was deposited in the mail postage prepaid, properly addressed to the office, officer or person with which or with whom the document is required to be filed. If any document is sent by United States registered mail, the registration shall be *prima facie* evidence that the document was delivered to the person to which or to whom it is addressed. If any date including any extension of time for performing any act falls on a Saturday, Sunday or legal holiday in this state, the performance of that act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 160-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March

30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

Evergreen Lawn Service v. Director of Revenue, State of Missouri and the Administrative Hearing Commission, 685 SW2d 829 (Mo. banc 1985). The issue in this case was whether the taxpayer met the thirty-day requirement contained in section 161.273, RSMo for filing its appeal from a final decision of the director of revenue. In this case the thirtieth day was a Saturday. The taxpayer's agent, Airborne Freight Corporation, attempted delivery of the appeal at the offices of the Administrative Hearing Commission on that Saturday. Since no one was available to receive the appeal, it was not physically received by the commission until Monday, the thirty-second day.

The director posited and the commission held that the taxpayer's appeal was untimely. They reasoned that the only exception to actual receipt was section 161.350, RSMo, which deems timely the receipt of appeals mailed within the prescribed period by registered mail.

The court's analysis was not directed towards when the thirty-day period expired, but rather towards what action was sufficient to constitute filing. In the court's opinion section 161.350, RSMo was not relevant, since actual filing had been attempted on Saturday, the thirtieth day. The court found that the attempted delivery was adequate to constitute a constructive filing thereby making the appeal timely.

Falley's Food-4-Less v. Director of Revenue, Case No. RS-83-0010 (A.H.C. 8/3/87). Petitioner, a retail seller, filed his sales tax returns for October 1981 and August 1982 via the United States mail. The postmark dates on these returns were November 23, 1981 and September 22, 1982, respectively. Respondent assessed penalties for late filing on these periods.

The Administrative Hearing Commission held since the amount of tax imposed on petitioner was in excess of \$250 for the first or second month of a calendar quarter, the payments were due by the twentieth day of the succeeding month. Petitioner was required by statute, not by the director, to file monthly instead of quarterly returns, therefore 144.080.2, RSMo applies rather than 144.090, RSMo.

Further, 12 CSR 10-3.506 provides that timeliness of a sales tax return is to be determined by reference to the return's postmark. Because petitioner's returns were postmarked

November 23 and September 22, these returns were filed out of time.

12 CSR 10-3.508 Effect of Saturday, Sunday or Holiday on Payment Due
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 160-3 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 16, 1980.

12 CSR 10-3.510 No Permanent Extensions
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 160-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.512 Calendar Month Defined
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 170-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.514 Exemption Certificate

PURPOSE: This rule interprets the sales tax law as it applies to the acceptance of exemption certificates during and after an audit.

(1) After completion of an audit, the director, in appropriate cases, may permit deductions where exemption certificates were acquired after the audit commenced.

*AUTHORITY: section 144.270, RSMo 1994. *S.T. regulation 190-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.516 Application for Refund/Credit—Amended Returns
(Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 190-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Emergency

amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

International Business Machines, Inc. V. Department of Revenue, 765 SW2d 611 (Mo banc. 1989).

12 CSR 10-3.518 Claim Form
(Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 190-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-3.520 Who Should Request Refund

(Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 190-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-3.522 Purchaser's Promise to Accrue and Pay

PURPOSE: This rule clarifies that the seller is not relieved of his/her liability for the sales tax even if the seller accepted an exemption certificate from the purchaser.

(1) Sellers may not relieve themselves of responsibility for the tax by merely accepting a letter or statement from their purchaser that they will accrue and pay this tax.

(2) The acceptance of an exemption certificate will not necessarily relieve the seller of his/her liability for the sales tax in the event that the sale of tangible personal property, services, substances or things was a sale at retail subject to the sales tax, unless the seller acted in good faith reliance upon the exemption certificate and did not know or have reason to know, that the certificate or actual use of the goods purchased was not for the claimed exemption (see *Farm and Home Savings Association v. Spradling*, 538 SW2d (Mo. banc 1976) and 12 CSR 10-3.536).

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 190-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

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

12 CSR 10-3.524 Bad Debts (Rescinded May 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 190-6 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Nov. 9, 2000, effective May 30, 2001.

12 CSR 10-3.526 Refund Rather Than Credit (Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 190-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-3.528 No Interest on Refund/Credit (Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 190-8 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

International Business Machines v. State Tax Commission, 362 SW2d 635 (1962). As to sales tax improperly collected, there is a provision for refund, but there is no provision that refunds bear interest.

12 CSR 10-3.530 Unconstitutional Taxes (Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. Based on the 1952 Supreme Court Decision *Kleban v. Morris*, 363 Mo. 7, 247 SW2d 832. S.T. regulation 200-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-3.532 Resale Exemption Certificates

PURPOSE: This rule interprets the sales tax law as it applies to utilization of exemption certificates and sets forth the requirement that exemption certificates be updated every five years.

(1) All sellers are required to keep exemption certificates signed by the purchaser or his/her agent for all exempt sales of tangible personal property or taxable services claimed.

(2) Once a seller has in his/her possession an exemption certificate from a purchaser, additional exemption certificates for individual purchases are not required as long as there is no change in the character of the purchaser's operation and the purchases are of tangible personal property or taxable services claimed under the original exemption certificate. The exemption certificates retained by the seller must be updated every five (5) years.

(3) All sales which are not supported by properly executed exemption certificates shall be deemed retail sales and the seller held liable for the sales tax.

(4) Resale exemption certificates may not be used to obtain tangible personal property or taxable services to be used or consumed by the purchaser, even if the purchaser decides that it would be more convenient to handle his/her purchases in this fashion.

(5) The Department of Revenue will provide a reasonable number of exemption certificates upon request.

(6) Purchase of alcoholic beverages from a wholesale distributor located in Missouri will be considered to have been purchased for resale if the purchaser supplies the wholesale distributor with a retail liquor license number. The possession of a retail liquor license number by a distributor will be treated as if it was a resale exemption certificate.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 210-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed July 20, 1987, effective Oct. 25, 1987. Amended: Filed Aug. 2, 1988, effective Jan. 13, 1989.

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

Op. Atty. Gen. No. 13, Burke (4-11-50). Persons engaged in business who do not have resale certificates with respect to certain transactions may offer evidence that such sales were not sales at retail.

House of Lloyd, Inc. v. Department of Revenue, Case Nos. RS-80-0053 and RS-80-0054 (A.H.C. 7/8/82). The Department of Revenue assessed the taxpayers for Missouri sales and use taxes for supplies purchased for their businesses under improper resale exemption certificates. The commission held that the waiver of the statute of limitations executed by the taxpayer's bookkeeper was invalid because the bookkeeper-auditor lacked actual authority. The Department of Revenue failed to meet its burden of proof on the issue of the waiver's validity by failing to show that the department's auditor had attempted to ascertain if petitioner's agent was acting within the scope of his authority before the bookkeeper-auditor signed the waiver of the statute of limitations.

Churchill Truck Lines, Inc. v. Director of Revenue, Case No. RS-85-0733 (A.H.C. 5/28/87). Taxpayer is a truck line, and objected to a sales tax assessment based upon sales of salvage freight and a use tax assessment based on the purchase of an airplane. The Administrative Hearing Commission found for the Department of Revenue on both issues. On the salvage issue, the commission found that the taxpayer failed to prove that resale exemption certificates were received on the purchase from the purchaser of the salvage.

H. Matt Dillon, d/b/a Midwest Home Satellite Systems v. Director of Revenue, Case No. RS-85-1741 (A.H.C. 12/9/88). The Administrative Hearing Commission found that sellers must obtain signatures on each individual invoice or written acknowledgment that a purchase is being made under an exemption certificate or letter if the certificate is not presented anew for each transaction; auctioneers acting for undisclosed principals are subject to sales tax as the seller of tangible personal property; and that auctioneers acting for disclosed principals must maintain satisfactory evidence of that fact.

12 CSR 10-3.534 Delivery of the Sale for Resale Exemption Certificate

PURPOSE: This rule interprets the sales tax law as it applies to the delivery of resale exemption certificates.

(1) In order for a seller to qualify for any deduction, s/he must in good faith accept an exemption certificate of a type approved by the Department of Revenue, delivered by a purchaser who resells tangible personal property in the ordinary course of business.

(2) If a seller sells tangible personal property or taxable services free of the sales tax on resale exemption certificate which s/he does not accept in good faith, the seller remains liable for tax.

(3) Example 1: X, a retail grocer, buys one hundred fifty dollars (\$150) worth of brooms from Y. X, however, will not give Y a sale for resale exemption certificate. If X later presents the certificate, Y can deduct the proceeds of the sale from his/her gross receipts in the month that the certificate is delivered.

(4) Example 2: A, a retail seller of television sets, sells a set to his/her friend B, the operator of a tavern. A remains liable for the sales tax even if s/he accepts a resale exemption certificate from B unless s/he establishes clearly that s/he was acting in good faith.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 210-2 was filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

Op. Atty. Gen. No. 13, Burke (4-11-50). Persons engaged in business who do not have resale certificates with respect to certain transactions may offer evidence that such sales were not sales at retail.

House of Lloyd, Inc. v. Department of Revenue, Case Nos. RS-80-0053 and RS-80-0054 (A.H.C. 7/8/82). The Department of Revenue assessed the taxpayers for Missouri sales and use taxes for supplies purchased for their businesses under improper resale exemption certificates. The commission held that the waiver of the statute of limitations executed by the taxpayer's bookkeeper was invalid because the bookkeeper-auditor lacked actual authority. The Department of Revenue failed to meet its burden of proof on the issue of the waiver's validity by failing to show that the department's auditor had attempted to ascertain if petitioner's agent was acting within the scope of his authority before the bookkeeper-auditor signed the waiver of the statute of limitations.

Overland Steel, Inc. v. Director of Revenue, 647 SW2d 535 (Mo. banc 1983). There were two issues in this case. The first was whether a taxpayer could claim a sales tax exemption for certain steel if sold, on the grounds that the purchasers were to use it in pollution control or plant expansion projects. The second was whether or not the transfer of steel to certain customers in Kansas was a sale subject to sales tax under the Commerce Clause of the **United States Constitution**. With respect to the first issue, the court found that the taxpayer had the burden of establishing that it was exempt from sales tax, and its failure to produce sales tax exemption certificates, coupled with the dearth of testimony concerning the exempt activities of taxpayer, fails to meet that burden. With respect to the second issue, the court found that when property is purchased subject to a resale certificate, the purchaser becomes liable for sales tax if the property is not resold. In this case the court found that because the taxpayer used the steel in question in its capacity as a contractor there was no resale. Therefore, the taxable event was the taxpayer's original purchase of the steel in Missouri. It was wholly irrelevant that the construction contract pursuant to which the steel was used was performed in Kansas. There was no violation of the Commerce Clause, and therefore, taxpayer was liable for tax.

12 CSR 10-3.536 Seller's Responsibility for Collection and Remittance of Tax

PURPOSE: This rule interprets the sales tax law as it applies to the seller's responsibility for collection and remittance of sales tax when an exempt sale is subsequently determined to have been a sale at retail subject to tax.

(1) When a seller reasonably accepts in good faith any exemption certificate that a person is purchasing the item under the exemption claimed, the certificate shall be evidence that the proceeds from the transaction are deductible from the seller's gross receipts. The burden of proving that a sale of tangible personal property, services, substances or things was not a sale at retail subject to the sales tax shall be upon the seller who made the sale.

(2) The furnishing of an exemption certificate to a seller by a buyer constitutes a claim by the buyer that the sale is exempt from sales tax. If the claim is found to be improper, the seller remains liable for the tax but the Department of Revenue may proceed against the buyer. If the department collects the tax

from the buyer, then the seller is entitled to a credit against the amount due from the seller on that purchase (see *Farm and Home Savings Association v. Spradling*, 538 SW2d 313 (Mo. banc 1976) and also 12 CSR 10-3.532).

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 210-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

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

Overland Steel, Inc. v. Director of Revenue, 647 SW2d 535 (Mo. banc 1983). There were two issues in this case. The first was whether a taxpayer could claim a sales tax exemption for certain steel if sold, on the grounds that the purchasers were to use it in pollution control or plant expansion projects. The second was whether or not the transfer of steel to certain customers in Kansas was a sale subject to sales tax under the Commerce Clause of the **United States Constitution**. With respect to the first issue, the court found that the taxpayer had the burden of establishing that it was exempt from sales tax, and its failure to produce sales tax exemption certificates, coupled with the dearth of testimony concerning the exempt activities of taxpayer, fails to meet that burden. With respect to the second issue, the court found that when property is purchased subject to a resale certificate, the purchaser becomes liable for sales tax if the property is not resold. In this case the court found that because the taxpayer used the steel in question in its capacity as a contractor there was no resale. Therefore, the taxable event was the taxpayer's original purchase of the steel in Missouri. It was wholly irrelevant that the construction contract pursuant to which the steel was used was performed in Kansas. There was no violation of the Commerce Clause, and therefore, taxpayer was liable for tax.

P.F.D. Supply Corporation v. Director of Revenue, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The Administrative Hearing Commission, relying on the exemption set forth in section 144.030.3(1), RSMo

for materials purchased for use in “manufacturing, processing, compounding, mining, producing or fabricating” found that the production of food by a restaurant constituted processing.

Relying on its previous decision *Blueside Co. v. Director of Revenue*, Case No. RS-82-4625 (A.H.C. 10/5/84) the commission found that the petitioner’s sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to *Blueside*, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in *Overland Steel, Inc. v. Director of Revenue*, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, Art. V, section 2, RSMo 1978 of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the *Overland Steel* case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2) in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller’s good faith exempted it from liability.

Finally, the commission held that non-reusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on such items.

Besel Roofing & Heating, Inc. v. Director of Revenue, Case No. RS-86-0240 (A.H.C. 8/27/87). The contractor contested liability

on the grounds that the seller should not have accepted the exemption certificate it offered because the certificate was missing information required by the department on a valid certificate. The Administrative Hearing Commission rejected the argument and held that where the exemption is improperly claimed, the department can recover from the purchaser.

12 CSR 10-3.538 Possession and Delivery of Exemption Certificates

PURPOSE: This rule interprets the sales tax law as it applies to possession and delivery of exemption certificates.

(1) All sellers must be in possession of, and have available for inspection, all exemption certificates for the period of an audit at the commencement of the audit.

(2) After completion of the audit, the Department of Revenue, in appropriate cases, may permit deductions where certificates were acquired after the audit commenced.

(3) The seller need be in possession of only one (1) exemption certificate of the type required from each buyer in order to claim the particular deduction sought.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 210-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

Overland Steel, Inc. v. Director of Revenue, 647 SW2d 535 (Mo. banc 1983). There were two issues in this case. The first was whether a taxpayer could claim a sales tax exemption for certain steel if sold, on the grounds that the purchasers were to use it in pollution control or plant expansion projects. The second was whether or not the transfer of steel to certain customers in Kansas was a sale subject to sales tax under the Commerce Clause of the United States Constitution. With respect to the first issue, the court found that the taxpayer had the burden of establishing that it was exempt from sales tax, and its failure to produce sales tax exemption certificates, coupled with the dearth of testimony concerning the exempt activities of taxpayer, fails to meet that burden. With respect to the second issue, the court found that when property is purchased subject to a resale certificate, the purchaser becomes liable for sales tax if the property is not resold. In this case

the court found that because the taxpayer used the steel in question in its capacity as a contractor there was no resale. Therefore, the taxable event was the taxpayer’s original purchase of the steel in Missouri. It was wholly irrelevant that the construction contract pursuant to which the steel was used was performed in Kansas. There was no violation of the Commerce Clause, and therefore, taxpayer was liable for tax.

12 CSR 10-3.540 Limitation on Assessment (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 220-1 was last filed Dec. 31, 1975, effective June 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

State ex rel. St. Louis Die Casting Corp. v. Morris, 219 SW2d 359 (1949). The failure of the director of revenue to include with the notice of additional assessment under section 144.210, RSMo a statutory notice in writing naming the time and place for a hearing “when and where such owner may appear before said board” caused the additional assessment to be void.

State ex rel. St. Louis Shipbuilding and Steel Company v. Smith, 201 SW2d 153 (1947). Respondent (state auditor) did not have the authority to compromise a tax that had been lawfully assessed. Under (former) section 11408 an assessment is made every time a sale is made at retail. (However) there is nothing in the Constitution or statutes that would prohibit respondent (state auditor) from compromising the interest and penalties in a disputed sales tax liability. The fact that it later may be found that no tax was due does not disturb the compromise.

12 CSR 10-3.542 Billing

PURPOSE: This rule defines a billing for purposes of the sales tax law.

(1) A billing of any tax, penalties or interest is a notice that, if not paid, an assessment will be made against the taxpayer. The billing is not itself an assessment and the billing is sent by regular mail. Assessments, when mailed, are sent by certified or registered mail.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 230-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.



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

12 CSR 10-3.544 Acknowledgement of Informal Hearing

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 230-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.546 Fifteen Days Defined—Personal Service

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation, 230-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.548 Form of Reassessment

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 240-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.550 Reassessment Petition Filing

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 240-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.552 Protest Payments

PURPOSE: This rule interprets the sales tax law as it applies to protest payments.

(1) If the taxpayer in good faith believes that s/he is not subject to the sales tax under the Missouri sales tax act, s/he, upon payment of the required amount of tax and denoting the payment as a protest payment when made, may file a protest payment affidavit, in which s/he specifically shall set out why s/he is protesting payment of the tax and give supporting information. The protest claim shall be made under oath and submitted within thirty (30) days after the protest payment. Failure to denote the payment as made under protest or to make a protest claim within the time required and under the conditions specified will void the protest claim.

(2) Protest payment forms (DOR-163) are available from the director of revenue upon request. Written request should be sent to Business Taxes Bureau, Technical Support Section, P.O. Box 840, Jefferson City, MO 65105.

(3) If a protest payment is not made by the required due date, interest and additions to tax should be included in the payment to properly perfect the protest.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 240-3 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

12 CSR 10-3.554 Filing Protest Payment Returns

PURPOSE: This rule provides instructions for filing protest payment returns.

(1) A taxpayer filing a protest payment return must submit a notarized protest payment affidavit with the return reflecting the specific amount of tax being paid under protest. Separate checks need not be submitted for the state and local sales taxes being protested.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 240-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.556 Interest and Discounts are Additional

PURPOSE: This rule interprets the sales tax law as it applies to the inclusion of interest and discounts in the computation of an assessment.

(1) In computing the amount to be assessed, the timely payment discount will be disallowed, interest and penalty due will be added. Interest will continue to accrue until the tax is paid. The penalty is a fixed percentage of the tax due.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 250-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March*

30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

State ex rel. St. Louis Shipbuilding and Steel Company v. Smith, 201 SW2d 153 (1947). Respondent (state auditor) did not have the authority to compromise a tax that had been lawfully assessed. Under (former) section 11408 an assessment is made every time a sale is made at retail. (However) there is nothing in the Constitution or statutes that would prohibit respondent (state auditor) from compromising the interest and penalties in a disputed sales tax liability. The fact that it later may be found that no tax was due does not disturb the compromise.

12 CSR 10-3.560 Rulings

(Moved to 12 CSR 10-3.003)

12 CSR 10-3.562 No Waiver of Tax

PURPOSE: This rule indicates the lack of authority for the director of revenue to waive outstanding sales tax.

(1) The director of revenue will not waive tax nor will s/he release or compromise a claim for outstanding tax due.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 270-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

State ex rel. St. Louis Shipbuilding and Steel Company v. Smith, 201 SW2d 153 (1947). Respondent (state auditor) did not have the authority to compromise a tax that had been lawfully assessed. Under (former) section 11408 an assessment is made every time a sale is made at retail. (However) there is nothing in the Constitution or statutes that would prohibit respondent (state auditor) from compromising the interest and penalties in a disputed sales tax liability. The fact that it later may be found that no tax was due does not disturb the compromise.

12 CSR 10-3.564 Jeopardized Collection

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 290-1 was last filed Dec. 31,

1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.565 Jeopardy Assessment

PURPOSE: This rule interprets the sales tax law as it applies to the issuance of a jeopardy assessment by the director of revenue.

(1) When the director may have reason to believe a taxpayer is about to discontinue business, dispose of assets, or for any other reason the director believes the payment of sales tax due the state is jeopardized, the director may issue a jeopardy assessment for the amount of tax to be paid and demand the same which becomes due and payable immediately upon that notice to the taxpayer.

AUTHORITY: section 144.270, RSMo 1994.* Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.

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

12 CSR 10-3.566 Itinerant or Transitory Sellers

PURPOSE: This rule interprets the sales tax law as it applies to itinerant or transitory sellers.

(1) Any retail business or any entertainment, recreation or place of amusement which is temporary or itinerant in nature may file its returns and payments on a daily basis with the Department of Revenue. If returns and payments are not made on a daily basis, the seller may file a return and payment with the Department of Revenue at the close of the event.

(2) Any duly authorized agent of the director, upon a personal visitation, is empowered to order the seller to ascertain the appropriate amount of tax due and submit payment to him/her at the close of each business day or at the close of the event. In all cases, sellers shall require proper identification and credentials before submitting payments to the agent and require a written receipt to be issued by the agent.

(3) Accurate records identifying gross receipts shall be maintained by each seller on all transactions.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rules nos. 32 and 33 Jan. 22, 1973, effective Feb. 1, 1973.

S.T. regulation 290-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.568 Sampling

PURPOSE: This rule authorizes the use of sampling in conducting a sales tax audit.

(1) The use of sound audit sampling techniques generally benefit both the taxpayer and the director of revenue. Audit sampling techniques generally reduce the time necessary to complete audit field work and reduce the taxpayer's time and effort in retrieving documents for audit purposes.

(2) The director of revenue or his/her duly authorized agent may use statistical sampling methods in lieu of a one hundred percent (100%) examination of records in conducting a sales/use tax audit.

(3) Statistical sampling methods include those procedures which utilize random selection and are capable of projecting population values with a known reliability.

(4) Upon written agreement by the taxpayer, the director of revenue or his/her duly authorized agent may utilize nonstatistical sampling methods in lieu of a one hundred percent (100%) examination of the records in conducting a sales/use tax audit.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 320-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Dec. 12, 1989, effective May 11, 1990.

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

Evergreen Lawn Service v. Director of Revenue, Case No. RS-80-0187 (A.H.C. 7/13/87). The taxpayer questioned the validity of the audit method utilized by the respondent because the assessment for these periods was not based upon the examination of actual records for those periods, but was estimated and extrapolated by unknown means. The Administrative Hearing Commission held that based upon the statutes and regulations, the respondent is authorized to compute estimated assessments on the basis of accurate and thorough examination of a taxpayer's actual records or other relevant data pertaining to the period in question. The commission con-

cluded that the audit did not meet this standard and discarded this portion of the audit and assessments.

12 CSR 10-3.570 Audit Facilities

PURPOSE: This rule outlines the responsibility of the taxpayer to furnish audit facilities.

(1) All taxpayers must furnish reasonably sufficient work space, lighting and working conditions for use by Department of Revenue agent(s) for the conducting of sales/use tax audits.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 320-3 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

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

12 CSR 10-3.572 Out-of-State Companies

PURPOSE: This rule outlines the responsibility of out-of-state companies for making records pertaining to Missouri locations available for audit at the Missouri location.

(1) Companies who have business location(s) in Missouri and maintain records at a central location outside Missouri, upon request, must make any or all records pertaining to the Missouri location(s) available to agents of the Department of Revenue at the Missouri location.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 320-4 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

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

12 CSR 10-3.574 Recordkeeping Requirements for Microfilm and Data Processing Systems

PURPOSE: This rule outlines the responsibility of companies whose records are on transparencies or film to provide facilities for viewing and capabilities for reproducing hard copies.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule

would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) Every retailer, seller, vendor and person doing business in this state or storing, using, leasing or otherwise consuming in this state tangible personal property shall keep complete and adequate records as may be necessary for the director or his/her authorized agent to determine the amount of sales and use tax liability as provided by Missouri law. These records must include the normal books of account ordinarily maintained by the average prudent businessman engaged in a business, together with all bills, receipts, invoices, cash register tapes or other documents of original entry supporting the entries in the books of account together with all schedules or working papers used in connection with the preparation of tax returns. Unless the director or his/her authorized agent authorizes an alternative method of bookkeeping in writing, these records shall show—

(A) Gross receipts from sales or rental receipts from leases, of tangible personal property (including any services that are a part of the sale or lease) made in this state, irrespective of whether the retailer, seller, vendor, person lessor or lessee regards the receipts to be taxable or nontaxable;

(B) All deductions allowed by law and claimed on the return filed; and

(C) Total purchase price of all tangible personal property purchased for sale, consumption or lease in this state.

(2) Microfilm and Microfiche Records. Records may be microfilmed or microfiched, including general books of accounts, such as cash books, journals, voucher registers, ledgers and like documents, as long as these microfilmed and microfiched records are authentic, accessible and readable and the following requirements are fully satisfied:

(A) Appropriate facilities are to be provided for preservation of the films or fiche for the periods required and open to examination and the taxpayers agree to provide transcriptions of any information on microfilm or microfiche which may be required for verification of tax liability;

(B) All microfilmed and microfiched data must be indexed, cross-referenced and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included and systematically filed to permit ready access;

(C) Taxpayers must make available upon request of the director or his/her authorized agent a reader/printer in good working order for reading, locating and reproducing any record concerning sales or use tax liability, or both, that is maintained on microfilm or microfiche;

(D) Taxpayers must set forth in writing the procedures governing the establishment of a microfilm or microfiche system and the individuals who are responsible for maintaining and operating the system with appropriate authorization from the board of directors, general partner(s) or owner, whichever is applicable;

(E) The microfilm or microfiche system must be complete and must be used consistently in the regularly conducted activity of the business;

(F) Taxpayers must establish procedures with appropriate documentation so the original document can be followed through the microfilm or microfiche system;

(G) The retailer/vendor must establish internal procedures for microfilm or microfiche inspection and quality assurance;

(H) The retailer/vendor is responsible for the effective identification, processing, storage and preservation of microfilm or microfiche making it readily available for as long as the contents may become material in the administration of any state revenue law;

(I) The retailer/vendor must keep a record identifying by whom the microfilm or microfiche was produced;

(J) When displayed on a microfilm or microfiche reader (viewer) or reproduced on paper, the material must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers; and

(K) All production of microfilm or microfiche and processing duplication, quality control, storage, identification and inspection must meet industry standards as set forth by the American National Standards Institute, National Micrographics Association or National Bureau of Standards.

(3) Records Prepared By Automated Data Processing (ADP) Systems. An ADP tax

accounting system may be used to provide the records required for the verification of tax liability. Although ADP systems will vary from one (1) taxpayer to another, all these systems must include a method of producing legible and readable records which will provide the necessary information for verifying the tax liability. The following requirements apply to any taxpayer who maintains any of these records on an ADP system:

(A) Recorded or Reconstructible Data. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detail printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions;

(B) General and Subsidiary Books of Account. A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall also be written out periodically;

(C) Supporting Documents and Audit Trail. The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the director or his/her authorized agent upon request. The system shall be so designed that supporting documents such as sales invoices, purchase invoices, credit memoranda and like documents are readily available;

(D) Program Documentation. A description of the ADP portion of the accounting system shall be made available. Important changes, together with their effective dates, shall be noted in order to preserve an accurate chronological record. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate—

1. The application being performed;

2. The application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and

3. The controls used to insure accurate and reliable processing; and

(E) Data Storage Media. Adequate record retention facilities shall be available for storing tax data and printouts as well as all supporting documents as may be required by law.

(4) Records Retention. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three (3) years.

(5) Examination of Records. All of the foregoing records shall be made available for examination within a reasonable time on request by the director or his/her authorized agent.

(6) Failure of the Taxpayer to Maintain and Disclose Complete and Adequate Records. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this regulation, the director shall—

(A) Impose and not abate or reduce in amount any additions/penalty as may be authorized by law; and

(B) Refer, where a taxpayer willfully fails to be in compliance by failure to file or understatement of sales or receipts, the information to the Criminal Investigation Bureau of the Department of Revenue.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 320-5 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Sept. 28, 1987, effective Jan. 14, 1988.

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

12 CSR 10-3.576 Records Retention

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 320-6 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

Cascio v. Beam, 594 SW2d 942 (Mo. banc 1980). Absent fraud or failure to file return, the Department of Revenue may not inspect taxpayer's sales tax records more than two years old (sections 144.320 and 144.330, RSMo).

12 CSR 10-3.578 Income Tax Returns May be Used

PURPOSE: This rule authorizes the use of income tax returns for the purpose of determining the amount of sales tax due.

(1) The director of revenue or his/her authorized agents, in determining the amount of sales tax due, are authorized to examine the taxpayer's books and records including the taxpayer's federal or state, or both, income tax returns and to use, in arriving at the proper amount of sales tax due, the information which may be found on the returns.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 330-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

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

12 CSR 10-3.579 Estoppel Rule

PURPOSE: This rule interprets the sales tax law as it applies to representations, both oral and written, made by employees of the Department of Revenue and the extent to which taxpayers may rely on these statements.

(1) Representations, both oral and written, by employees or representatives of the Department of Revenue, interpreting the status of the sales tax law, are merely for informational purposes and cannot be relied upon to substantiate or defend a position in litigation before any forums (see *St. Louis Country Club v. Administrative Hearing Commission of Missouri*, 657 SW2d 614 (Mo. banc 1983)).

AUTHORITY: section 144.270, RSMo 1994.* Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.

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

12 CSR 10-3.580 Registered Mail

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. Regulation 360-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.582 Hearing Location

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 370-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

State ex rel. St. Louis Die Casting Corp. v. Morris, 219 SW2d 359 (1949). The failure of the director of revenue to include with the notice of additional assessment under section 144.210, RSMo a statutory notice in writing naming the time and place for a hearing "when and where such owner may appear before said board" caused the additional assessment to be void.

12 CSR 10-3.584 Lien Filing

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 380-1 was filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 6, 1980, effective Dec. 11, 1980.

12 CSR 10-3.585 Filing of Liens

PURPOSE: This rule interprets the sales tax law as it applies to the filing of liens.

(1) In any case in which any tax, interest or penalty imposed under the sales tax statutes is not paid when due, the director of revenue may file or record with the recorder's office of the county in which the person owing sales tax, interest or penalty resides or has his/her place of business, a Notice of Lien specifying the amount of tax, interest or penalty due and the name of the person liable for the same.

(2) A lien may be released by filing for record in the office of county recorder a release executed by the director of revenue.

AUTHORITY: section 144.270, RSMo 1994.* Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.

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

12 CSR 10-3.586 Partial Release of Lien

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 280-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 6, 1980, effective Dec. 11, 1980.

State ex rel. St. Louis Shipbuilding and Steel Company v. Smith, 201 SW2d 153 (1947). Respondent (state auditor) did not have the authority to compromise a tax that had been lawfully assessed. Under (former) section 11408 an assessment is made every time a sale is made at retail. (However) there is nothing in the Constitution or statutes that would prohibit respondent (state auditor) from compromising the interest and penalties in a disputed sales tax liability. The fact that it later may be found that no tax was due does not disturb the compromise.

12 CSR 10-3.588 Taxation of Computer Software Programs

(Rescinded May 30, 2001)

AUTHORITY: sections 144.270 and 144.705, RSMo 1994. Original rule filed Feb. 25, 1983, effective June 11, 1983. Amended: Filed Feb. 2, 1990, effective June 28, 1990. Rescinded: Filed Nov. 9, 2000, effective May 30, 2001.

Ray S. James v. TRES Computer Systems, Inc., et al. 642 SW2d 347 (Mo. banc 1982). The issue in this case concerned whether the transfer of custom-made computer software by the use of tapes containing the data and programs constituted the sale of tangible personal property subject to sales tax. The court ruled that the data and programs in this case should not be taxed as tangible personal property because: 1) the tapes themselves were not the ultimate object of sale; and 2) it was not necessary that the information be put on tape. The court, in recognizing that computer technology is rapidly developing in complexity, emphasized that it did not intend to formulate a fixed, general rule which later could lead to unpredictable results.

12 CSR 10-3.590 Advertising Businesses
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed June 13, 1984, effective Nov. 11, 1984. Amended: Filed Dec. 2, 1985, effective March 24, 1986. Rescinded and readopted: Filed April 18, 1990, effective June 28, 1990. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.614 Theaters—Criteria for Exemption

PURPOSE: This rule sets forth the criteria which must be met by a theater in order to claim sales tax exemption.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) All ticket sales made by nonprofit summer theater organizations, if these organizations are exempt from federal tax under the provisions of the *Internal Revenue Code*, are not subject to the sales tax. All other purchases and sales made by these organizations are subject to the sales tax.

(2) A summer theater organization is a theater organization that presents performances primarily during the month of June, July, August or September.

(3) All sales made by or to nonprofit or community theaters other than summer theater organizations are subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. * Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.

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

12 CSR 10-3.620 Review of Assessments by the Administrative Hearing Commission

PURPOSE: This rule indicates the time period a taxpayer has to file a written complaint with the Administrative Hearing Commission concerning a final decision by the director of revenue.

(1) A taxpayer may appeal a final decision of the director of revenue by filing a written complaint with the Administrative Hearing Commission within sixty (60) days after the mailing or delivery of the final decision, whichever is earlier (see section 144.261 and 621.050, RSMo).

(A) The sixty (60)-day appeal period begins to run on the mailing date of the decision or on the delivery date if the decision is hand-delivered to the taxpayer, whichever date is earlier.

(B) A complaint filed by any means other than registered or certified mail is considered to be filed in the commission on the date the complaint is actually received by the commission. A complaint filed by registered or certified mail is considered to be filed with the commission on the date it is mailed by the taxpayer.

AUTHORITY: section 144.270, RSMo 1994. * Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed Jan. 3, 1996, effective July 30, 1996.

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

12 CSR 10-3.622 Special Event Liquor License—Temporary Sales Tax License
(Rescinded August 26, 1985)

AUTHORITY: section 144.270, RSMo 1978. Original rule filed Sept. 10, 1984, effective Jan. 12, 1985. Rescinded: Filed May 22, 1985, effective Aug. 26, 1985.

12 CSR 10-3.626 Quarter-Monthly Period Reporting and Remitting Sales Tax

PURPOSE: Under the sales tax law (sections 144.010 and 144.510, RSMo), this rule establishes the requirement of reporting and remitting sales taxes on a quarter-monthly period to protect state revenue and improve the cash flow of revenue for the state.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) For purposes of this rule, the following terms shall mean:

(A) State sales tax means the tax imposed by sections 144.010–144.525, RSMo and the additional sales tax imposed by sections 43 and 47, Article IV of the *Missouri Constitution*, but does not include any sales tax imposed by political subdivisions of the state;

(B) Quarter-monthly period means—

1. The first seven (7) days of a calendar month;
2. The eighth to fifteenth day of a calendar month;
3. The sixteenth to twenty-second day of a calendar month; and
4. The portion following the twenty-second day of a calendar month to the end of that month;

(C) Quarter-monthly remittance means the tax required to be collected for the quarter-monthly periods that must be remitted to the director of revenue prior to the filing of the monthly return;

(D) Return means the monthly return required to be filed under sections 144.080 and 144.090, RSMo;

(E) Unpaid amount means the aggregate state sales tax required to be collected less the compensation authorized in section 144.120, RSMo; and

(F) Underpayment means ninety percent (90%) of the unpaid amount for the quarter-monthly period minus the amount of the timely remittance for the same period.

(2) If any seller has collected or been required to collect aggregate state sales tax of fifteen thousand dollars (\$15,000) or more in each of at least six (6) months during the prior twelve (12) months, the seller shall remit payment to the director of revenue on a quarter-monthly basis on a form or to a depository designated by the director of revenue.

(3) Payment and the form will be timely if mailed to the address provided on the approved form within three (3) banking days after the end of the quarter-monthly period or is actually received by the director of revenue in Jefferson City, Missouri or deposited in a depository designated by the director within four (4) banking days after the end of the quarter-monthly period. Banking days shall not include Saturday, Sunday, legal and local holidays observed by the United States Postal Service.

(4) A seller subject to this rule will be considered to have complied with the requirements for remitting quarter-monthly sales tax and would not be subject to an underpayment penalty of five percent (5%) if his/her quarter-monthly payments are at least—

(A) Ninety percent (90%) of the unpaid amount (defined in section (1) of this rule) at the end of a quarter-monthly period; or

(B) One-fourth (1/4) of the average monthly sales tax liability of the seller for the preceding calendar year and the seller had a state sales tax liability for at least six (6) months of the previous calendar year. The month of the highest liability and the month of the lowest liability shall be excluded in computing the monthly average.

(5) The penalty of five percent (5%) shall not be imposed if the seller establishes that the failure to make a timely remittance of at least ninety percent (90%) was due to reasonable cause and not due to willful neglect.

(6) A seller who fails to make a timely quarter-monthly remittance will be assessed a penalty equal to five percent (5%) of the difference between the amount of any timely

remittance and the lesser of the amounts computed under subsection (4)(A) or (B).

(A) Example 1: Business A receives an estimate of five thousand dollars (\$5,000) per quarter-monthly period. Business A's actual tax collections are six thousand dollars (\$6,000) per quarter-monthly period. If business A pays the five thousand dollar (\$5,000) estimate timely, no penalty is charged. If business A underpays the estimate by two thousand dollars (\$2,000) (it pays three thousand dollars (\$3,000)), the penalty is five percent (5%) of the difference between the amount paid, three thousand dollars (\$3,000), and the estimate, five thousand dollars (\$5,000). The penalty is calculated as follows: $\$5,000 - \$3,000 = \$2,000 \times 5\%$ penalty = \$100.

(B) Example 2: Assume the same circumstances as in Example 1 except that business A's actual collections for the quarter-monthly period are four thousand dollars (\$4,000), which is one thousand dollars (\$1,000) less than the estimated tax. The penalty would be thirty dollars (\$30) calculated as follows: $\$4,000 \times 90\% = \$3,600 - \$3,000$ timely payment = \$600 underpayment $\times 5\%$ penalty = \$30.

(7) A seller who can demonstrate to the director of revenue's satisfaction that s/he has not been required to make any quarter-monthly remittance during six (6) months of the previous twelve (12) months and has collected an aggregate amount of fifteen thousand dollars (\$15,000) or more by the end of the month will not be penalized for failure to make remittance for the quarter-monthly periods of the first two (2) months in which s/he was otherwise required to have complied with the provisions of this rule.

(8) Sellers remitting state sales tax on the accelerated basis are required to file a monthly return and remit any unpaid amounts.

(9) A seller making accelerated payments under this rule who desires to protest any portion of the tax shall indicate the protested tax amounts on the monthly return. The protested tax should not be shown at the time the accelerated payments are made.

(10) Notwithstanding any other rule relating to state sales tax to the contrary, this rule shall be in force and effect.

*AUTHORITY: section 144.081, RSMo 1994. * This rule was previously filed as 12 CSR 10-3.027. Emergency rule filed Dec. 30, 1983, effective Jan. 9, 1984, expired May 8, 1984. Original rule filed Dec. 30, 1983, effective April 12, 1984. Amended: Filed May 9,*

1985, effective Aug. 26, 1985. Amended: Filed March 21, 1986, effective July 11, 1986. Emergency amendment filed March 4, 1991, effective March 14, 1991, expired July 11, 1991. Amended: Filed March 4, 1991, effective July 8, 1991. Amended: Filed April 14, 1995, effective Sept. 30, 1995.

**Original authority: 144.081, RSMo 1983, amended 1986.*

12 CSR 10-3.830 Diplomatic Exemptions—Records to be Kept by Sellers as Evidence of Exempt Sales

PURPOSE: This rule sets forth the criteria and procedure for obtaining diplomatic exemptions from sales tax based upon the department's participation in the sales tax exemption program conducted by the United States Department of State.

(1) Effective February 15, 1986, diplomatic and consular personnel are exempt from Missouri sales tax on their purchases provided that the person claiming the exemption presents an official sales tax exemption identification (ID) card issued by the United States Department of State. The ID card must include the photograph of the individual claiming exempt status, the signature of the individual, the ID number designated for the individual as well as the expiration date for the exemption.

(2) The diplomatic and consular personnel exemption is subject to any limitations indicated upon the ID card.

(3) Example: Diplomat A presents an exemption card to a hotel. The exemption card indicates that s/he is exempt from sales tax on all purchases except hotel room accommodation charges. The hotel charges Diplomat A for his/her hotel room, meals and incidental purchases from the hotel gift shop. Diplomat A is exempt on the meal charges and incidental purchases; however, the hotel must collect sales tax on the hotel room charges.

(4) The seller shall be required to keep as evidence of the exempt sale the following information to be recorded on each sales invoice; the seller remains liable for the applicable sales tax if the seller fails to maintain this information recorded on the sales invoice establishing an exempt diplomatic and consular personnel sale:

- (A) Date of transaction;
- (B) Name of the person claiming exempt status;
- (C) ID number on the ID card;

- (D) Expiration date on the ID card;
- (E) Statement of exempt status on the ID card including any stated limitations (that is, total exemption from sales tax, partial exemption from sales tax); and
- (F) Signature of the individual claiming the exempt status.

(5) Effective February 15, 1986, the “Foreign Government Exemption Card,” DOR form 598, will become invalid. This exemption card was printed on cardstock paper, four inches by five inches (4" x 5") in size, white in color, bearing the caption “Foreign Government Exemption Card” and was signed by the director of revenue on the bottom left-hand corner. It should not be accepted as a valid exemption from Missouri sales tax. The Department of Revenue will discontinue the issuance of exemption cards pursuant to sections 144.030.1. and 144.615, RSMo on February 15, 1986.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Dec. 3, 1985, effective Feb. 24, 1986.*

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

12 CSR 10-3.832 Diplomatic Exemptions—Acknowledgement and Procedure for Requesting

PURPOSE: This rule sets forth the criteria and procedure for obtaining diplomatic exemptions from sales tax based upon the department’s participation in the sales tax exemption program conducted by the United States Department of State.

- (1) Foreign diplomatic and consular personnel may be exempt from Missouri sales tax pursuant to section 144.030.1, RSMo if the laws of the United States of America and treaty obligations between the United States and foreign countries so exempt them from state sales tax.
- (2) Effective February 15, 1986, the determination of exempt status for diplomatic and consular personnel will be made by the United States Department of State. Any person claiming exempt status from Missouri sales tax based upon his/her diplomatic or consular status shall make application to the United States Department of State, Office of Foreign Missions, Washington, D.C.
- (3) The United States Department of State, upon reviewing applications for exemption from sales tax, will issue exemption cards to

qualified individuals based upon reciprocal treaty obligations and other laws between the United States and the foreign country.

(4) The Missouri Department of Revenue will cease issuing exemptions from sales tax for diplomatic and consular personnel after February 14, 1986. All exemptions issued on or before February 14, 1986, will terminate and expire effective February 14, 1986.

(5) Honorary consuls are not eligible for exemptions from sales tax. The Department of Revenue will discontinue the issuance of exemption cards pursuant to sections 144.030.1. and 144.615, RSMo on February 15, 1986.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Dec. 3, 1985, effective Feb. 24, 1986.*

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

12 CSR 10-3.834 Titling and Sales Tax Treatment of Boats

(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1992. Original rule filed May 21, 1986, effective Aug. 25, 1986. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.836 Payment of Filing Fees for Lien Releases

PURPOSE: This rule clarifies the payment of filing fees to the county recorder for lien releases (section 144.380, RSMo).

- (1) With each group of discharge of tax liens the county recorder will receive a statement entitled Liens to be Released. The statement will list each discharge of tax lien which must be filed. The statement of liens to be released must be returned to the Department of Revenue on a weekly basis. The lien release statements will be accumulated by the Department of Revenue and the county recorder will be paid on a quarterly basis. All statements for the calendar quarter must be submitted to the department no later than the fifteenth day of the month following the end of the quarter. If the statements are submitted after the fifteenth of the month they will not be paid until the end of the next quarter.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Nov. 19, 1986, effective March 12, 1987.*

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

12 CSR 10-3.838 Payment of Filing Fees for Tax Liens

PURPOSE: This rule clarifies the payment of filing fees to the county recorder for tax liens (section 144.380, RSMo).

- (1) With each group of tax liens the county recorder will receive a statement entitled Liens to be Filed. The statement will list each lien to be filed in the county. It will also provide an area for the recorder to insert an identifying number for each lien. The statement must be returned to the Department of Revenue on a weekly basis. The lien filing statements will be accumulated by the Department of Revenue and the county recorder will be paid on a quarterly basis. All statements for the calendar quarter must be submitted to the department no later than the fifteenth day of the month following the end of the quarter. If the statements are submitted after the fifteenth of the month they will not be paid until the end of the next quarter.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Nov. 19, 1986, effective March 12, 1987.*

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

12 CSR 10-3.840 Photographers

(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed April 10, 1987, effective Aug. 13, 1987. Amended: Filed Oct. 22, 1987, effective Feb. 11, 1988. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.842 Surety Companies—Remittance Requirements

(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed June 12, 1987, effective Oct. 25, 1987. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.844 Letters of Credit

(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 28, 1987, effective Jan. 14, 1988. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.846 Taxability of Sales Made at Fund-Raising Events Conducted by Clubs and Organizations Not Otherwise Exempt From Sales Taxation

PURPOSE: This rule clarifies the taxability of admission charges to certain fund-raising events conducted by clubs and organizations not otherwise exempt from the collection and payment of sales tax.

(1) Admission receipts to a fund-raising event, where food and beverages or other tangible personal property are provided to those attending, are not subject to sales tax when the person conducting the fund raising event has paid sales tax on his/her purchases of the food and beverages and other tangible personal property to be provided to those attending. The taxable event takes place when the food and beverages are purchased by the promoter of the event. For sales tax purposes, the promoter of the event is deemed to be the consumer of the food, beverages and other tangible property.

(2) Receipts derived from the sale of tangible personal property, which are separate from and unrelated to the admission receipts from the fund-raising event, are subject to sales tax.

(3) Example: A club conducts a fund-raising event. Admission tickets are sold for fifty dollars (\$50) each. The ticket entitles the purchaser to admission to the event which includes food and beverages which were purchased from a caterer by the club for twenty dollars (\$20) per person plus sales tax. The ticket also includes a memento, a soccer ball key chain, which the club purchased for one dollar (\$1), plus sales tax. During the course of the event, an auction is conducted and items are sold to raise additional funds. Photos of the team are also offered for sale. Receipts from the admission tickets are considered donations and are not subject to sales tax; however, receipts derived from the auction and sale of the photos are subject to sales tax.

(4) Example: Assume the same facts as in section (3). There is also a cash bar operated by the hotel. The hotel must collect sales tax on all sales made at its bar.

(5) Example: A club conducts a fund-raiser. Admission tickets are sold for one hundred dollars (\$100) each. The club buys food and beverages under a resale exemption certificate. The actual cost of food and beverages is twenty dollars (\$20) per ticket. Since the club

did not pay tax on its purchase of food and beverages, but purchased them for resale, the taxable event is considered to take place when the admission ticket is sold. Therefore, the club must obtain a temporary sales tax license and must collect sales tax on the one hundred dollar (\$100) admission ticket.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Dec. 15, 1987, effective April 28, 1988.*

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

12 CSR 10-3.848 Concrete Mixing Trucks (Rescinded January 30, 2000)

AUTHORITY: sections 144.030.2(5) and 144.270, RSMo 1994. Original rule filed July 6, 1988, effective Oct. 27, 1988. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

12 CSR 10-3.850 Veterinary Transactions (Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Feb. 23, 1989, effective June 11, 1989. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.852 Orthopedic and Prosthetic Devices, Insulin and Hearing Aids (Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Aug. 23, 1988, effective Jan. 27, 1989. Amended: Filed Dec. 12, 1989, effective May 24, 1990. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-3.854 Applicability of Sales Tax to the Sale of Special Fuel

PURPOSE: This rule explains the method of calculating sales tax on special fuel which is used for nonhighway purposes.

(1) Gross receipts from the sale of special fuel, as defined in section 142.362(8), RSMo, which is used for nonhighway purposes, are subject to Missouri state sales tax.

(2) Sales tax on the sale of special fuel for nonhighway purposes, should be calculated as follows: the total retail selling price of the special fuel less the federal excise tax should be multiplied by the applicable state and local sales tax rate.

(3) Example: Special fuel Dealer A sells one thousand (1,000) gallons of diesel fuel for nonhighway use to Customer B. The appropriate federal excise tax per gallon should be subtracted from the total sales price per gallon and state and local sales tax figured on the remainder. The resulting figure will reflect the amount of sales tax due per gallon sold. Assume the total selling price of diesel fuel inclusive of the federal excise tax is \$.951 per gallon and that \$.151 is the portion attributable to federal excise tax. Special fuel Dealer A should deduct \$.151 per gallon from the selling price of \$.951. The remaining \$.80 per gallon should be multiplied by the appropriate state and local sales tax rate.

\$.951 (retail selling price per gallon)
 - .151 (federal excise tax per gallon)
 = .800 (Net per gallon subject to tax)
 × .0625 (state and local tax rate)
 = .05 (tax per gallon)
 × 1,000 (gallons sold to B)=
 \$50.00 (sales tax due)

AUTHORITY: sections 142.621 and 144.270, RSMo 1994. Original rule filed Aug. 23, 1988, effective Jan. 27, 1989.*

**Original authority: 142.621, RSMo 1972 and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.856 Direct Pay Agreement

PURPOSE: This rule lists the requirements for a business or corporation to enter into a direct pay agreement with the Department of Revenue

(1) A business or corporation may apply in writing to the Department of Revenue for a direct pay agreement. By this agreement the Department of Revenue allows a business or corporation to pay sales taxes on its purchases directly to the department, rather than to the seller.

(2) The following requirements shall be satisfied before the Department of Revenue shall consider a business or corporation for a direct pay agreement:

(A) The application must be signed by the applicant business owner or an officer of the applicant corporation;

(B) The applicant business or corporation agrees to accrue and pay all taxes imposed by Chapters 66, 67, 92, 94 and 144, RSMo and Article IV, sections 43A and 47A of the Missouri Constitution on the purchases of all taxable items made by the applicant business or corporation excluding items which are exempted under Chapter 144, RSMo. Taxes authorized under Chapters 66, 67, 92 and 94, RSMo shall be accrued and paid based upon the place of business of the purchaser;

(C) All accrued sales taxes shall be paid in accordance with the filing status of the applicant business or corporation as determined by the Revised Statutes of Missouri. The applicant business or corporation shall be assessed penalties and interest in accordance with Chapter 144, RSMo for failure to file and to pay the accrued taxes in accordance with its filing status;

(D) The applicant business or corporation shall not qualify for the timely filing discount provided in section 144.140, RSMo; and

(E) Records must be submitted to demonstrate that the business or corporation annually purchases nonresaleable items in excess of seven hundred fifty thousand dollars (\$750,000).

(3) The Department of Revenue has sole authority to decide whether the applicant qualifies for a direct pay agreement, subject to appeal to the Administrative Hearing Commission as provided by section 144.261, RSMo.

(4) An applicant who has been denied a direct pay agreement may reapply but shall be required to meet the original agreement qualifications.

(5) The holder of a direct pay agreement shall furnish a copy of the direct pay certificate to all sellers from whom it purchases taxable items. This certificate relieves the seller of any obligation of collecting from the holder, state and local taxes imposed by Chapters 66, 67, 92, 94 and 144, RSMo and Article IV, sections 43A and 47A of the Missouri Constitution. This certificate shall apply to all sales of taxable items after its date.

(6) A direct pay agreement and certificate shall remain valid until the Department of Revenue issues a cancellation notice.

(7) The Department of Revenue shall send notice of cancellation to the holder of the

direct pay certificate by certified or registered mail.

(8) The holder may notify the Department of Revenue if s/he wishes to voluntarily relinquish a direct pay certificate.

(9) Upon receipt of a notice of cancellation from the Department of Revenue, the business or corporation, within ten (10) days from the date of the cancellation letter, shall notify each seller in writing that the direct pay certificate is no longer valid.

(10) The holder of a direct pay certificate shall be required to provide proof of qualification every five (5) years.

(11) Any seller who accepts a direct pay certificate in good faith from a purchaser may rely on the certificate until receiving written notice of cancellation from the purchaser or the department.

AUTHORITY: sections 144.190.4 and 144.270, RSMo 1994. Original rule filed May 2, 1989, effective Sept. 11, 1989.*

**Original authority: 144.190.4, RSMo 1939, amended 1941, 1943, 1945, 1979, 1986, 1988, 1991 and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.858 Purchases by State Senators or Representatives

PURPOSE: This rule clarifies the treatment of the tax liability on purchases by a Missouri state senator or representative.

(1) Purchases of tangible personal property made by or on behalf of a Missouri state senator or representative are exempt from all taxes imposed by Chapters 66, 67, 92, 94 and 144, RSMo and Article IV, sections 43A and 47A of the Missouri Constitution providing these purchases are made from funds in the senator's or representative's state expense account.

(2) Exempt items include:

(A) Purchases of meals, lodging and other travel expenses itemized on the state senator's or state representative's monthly expenses account (form C-12); and

(B) Purchases or rental of office furniture, supplies and equipment which are itemized to the house or senate accounting office for reimbursement.

(3) Purchases and personal living expenses reimbursed by the per diem for state senators

and state representatives authorized under section 21.145, RSMo are not exempt from state sales and use taxes.

(4) A copy of a valid letter of exemption must be furnished to the seller when purchasing or leasing property. The letter of exemption represents evidence of a claim of exemption by the purchaser to the seller that the sale was to a state senator or state representative and purchased from funds in his/her state expense account. Letters of exemption, issued by the Department of Revenue, are valid for the state senator's or representative's term of office.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 26, 1989, effective May 11, 1989.*

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

12 CSR 10-3.860 Marketing Organizations Soliciting Sales Through Exempt Entity Fund-Raising Activities

PURPOSE: This rule interprets the sales tax applicable to marketing organizations soliciting sales through exempt entity fund-raising activities.

(1) Sales by marketing organizations through representatives or members of elementary and secondary schools, religious and charitable organizations and other not-for-profit entities exempt from sales or use tax are subject to Missouri sales tax on the marketing organizations' net receipts from those sales. Sales tax is not due on the amount retained by or returned to the exempt organization.

(2) Sales tax is due on transactions involving Missouri-based marketing organizations and tax exempt entities organized under the laws of Missouri.

(3) Sales tax shall be collected on each item sold in accordance with sections 144.010-144.510, RSMo and the tax may be collected by exempt organizations' members by a separate statement of the tax due on each sales slip or other evidence of sale. Local tax will be applied at the rate for the location of the instate marketing organization.

(4) The marketing organization should instruct the exempt organization that sales tax must be collected on the portion of gross receipts returned to the marketing organization.



(5) The tax due may be calculated on the proceeds to be returned to the marketing organization and then added to the original selling price (Example 1) or calculated on the proceeds to be returned to the marketing organization and included as part of the selling price (Example 2).

(6) Example 1: Marketing organization “A” agrees to provide widgets to the band at school “B” to be sold by band members to raise funds for a band trip. The widgets are to be sold for ten dollars (\$10) each, with “A” to receive six dollars (\$6) and “B” four dollars (\$4) per widget. School “B” should collect thirty-seven cents (37¢) sales tax in addition to the ten-dollar (\$10) sales price. The thirty-seven cents (37¢) represents sales tax at the hypothetical rate of 6.225% (the rate in effect for organization “A’s” business location) on the six-dollar (\$6) taxable receipts and should be remitted by school “B” to organization “A”. The four dollars (\$4) received by school “B” is exempt from tax. “A” is required to remit thirty-seven cents (37¢) to the Department of Revenue for sales tax on its six-dollar (\$6) net receipts. It makes no difference whether school “B” (which collects ten dollars and thirty-seven cents (\$10.37) from the customer) sends ten dollars and thirty-seven cents (\$10.37) to the marketing organization “A” which then returns four dollars (\$4) to band “B”; or sends only six dollars and thirty-seven cents (\$6.37) to marketing organization “A”.

(7) Example 2: Using the same facts as Example 1 in section (6), school “B” could charge ten dollars (\$10) for the widget with the express understanding that the ten dollars (\$10) charged includes the sales tax. The tax would be computed on the six dollars (\$6) received by “A”. The tax would still be thirty-seven cents (37¢) ($\$6 \times 6.225\%$). “A” would be required to remit thirty-seven cents (37¢) per widget to the Department of Revenue. School “B” would receive three dollars and sixty-three cents (\$3.63) not subject to sales tax, per widget sold.

*AUTHORITY: section 144.705, RSMo 1994. * Original rule filed Feb. 23, 1989, effective Aug. 11, 1989.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-3.862 Sales Tax on Vending Machine Sales

PURPOSE: This rule interprets the sales tax law as it applies to sales of items other than photocopies and tobacco-related products

through vending machines under section 144.012, RSMo.

(1) Persons selling tangible personal property other than photocopies and tobacco-related products through vending machines are making retail sales. The sale shall be deemed to take place at the location of the vending machine. The local sales tax rate, if any, shall be based upon the location of the vending machine from which the tangible personal property is sold.

(2) A vendor is the person who owns the property sold through a vending machine. The vendor is responsible for reporting and remitting directly to the director of revenue state and local sales tax on one hundred thirty-five percent (135%) of the net invoice price of the tangible personal property sold. While the tax is based on one hundred thirty-five percent (135%) of the cost of the goods, the self accrual of the sales tax by the vendor shall be reported and remitted for the period in which the items are sold.

(3) A vending machine is defined as a coin or currency operated device which is used to sell tangible personal property without requiring the vendor’s physical attention at the time of the sale. This is not limited to mechanically operated devices and includes honor boxes. Example: Jack has twelve (12) vending machines. Of this amount, six (6) are mechanically operated vending machines and six (6) are honor boxes located in various businesses throughout the city. Both the honor boxes and the mechanically operated machines qualify as vending machines.

(4) Exempt Location Sales.

(A) Sales of tangible personal property other than photocopies or tobacco-related products from vending machines located on the premises of specified nonprofit entities or organizations, as listed in paragraphs (4)(A)1.-3., are not subject to state or local sales tax. Locations at which personal property may be vended tax exempt include buildings or land owned, leased or occupied by these organizations and used for their religious, charitable or educational functions and activities. The organizations upon whose premises items may be vended tax exempt are—

1. Religious organizations granted an exemption under section 144.030.2(19), RSMo;

2. Charitable organizations granted an exemption under section 144.030.2(19), RSMo; and

3. Elementary and secondary schools operated at public expense.

(B) Vendors shall obtain a copy of the exemption letter issued by the Missouri Department of Revenue to the religious or charitable organization or elementary or secondary school prior to making tax exempt vending sales on the organization’s or school’s premises. Vendors shall be held liable for tax on all sales made from vending machines on premises of organizations for which they do not have a copy of the organization’s exemption letter. Copies of those letters shall be maintained by the vending machine owner/operator for audit purposes.

(5) Vendors may use an average cost of goods sold and average exempt location sales to calculate their taxable sales and the tax liability on those sales. The net invoice price is the cost of the product, including freight, less any quantity or timely payment discounts. Products sold through vending machines outside Missouri are not subject to section 144.012, RSMo and the cost of these products shall not be included in the computation of the vendors’ cost of goods sold.

(A) Example: On February 1, Bill purchases products to sell in his vending machines at a cost of fifteen thousand dollars (\$15,000), including freight. The wholesaler allowed Bill a quantity discount of three percent (3%) plus a two percent (2%) timely payment discount. Both the quantity discount and the timely payment discount may be deducted when computing the net invoice price.

Purchase Price	\$15,000.00
Less quantity discount	\$ 450.00 ($\$15,000 \times 3\%$)
Less timely payment discount	\$ 300.00 ($\$15,000 \times 2\%$)
Net invoice price	\$14,250.00

(B) During February, Bill sold all of the products noted above for twenty-eight thousand five hundred dollars (\$28,500). Bill has vending machines located on commercial property and on premises of public elementary schools. Bill has a copy of the school’s tax exemption letter. The sales at the schools amounted to seven thousand one hundred twenty-five dollars (\$7,125) and sales at the other locations amounted to twenty-one thousand three hundred seventy-five dollars (\$21,375). The sales at the exempt locations equal twenty-five percent (25%) of the gross sales.

(C) Bill may calculate this tax liability either by specifically identifying the cost of the items sold through each machine or by using an averaging method. If Bill uses the



averaging method, the following calculation would be made:

	<u>Taxable Locations</u>	<u>Nontaxable Locations</u>
Gross sales	\$21,375	\$7,125
Percent of gross at each type of Location	75%	25%

(D) After computing his gross sales at taxable and nontaxable locations, Bill must allocate his cost of goods sold to the taxable and exempt locations. As noted previously, Bill's net invoice price cost of goods sold for the month was fourteen thousand two hundred fifty dollars (\$14,250).

	Cost of goods sold × Exempt/Nonexempt Location Percentage	
Taxable Locations	\$14,250 × .75 =	\$10,688
Nontaxable Locations	\$14,250 × .25 =	\$ 3,562

(E) To calculate his tax liability, Bill must multiply the cost of goods at the taxable locations by one hundred thirty-five percent (135%) to arrive at his taxable purchases under section 144.012, RSMo.

Cost of goods sold at Taxable Locations	\$10,688.00
Taxed at 135% of Cost	× <u>1.35</u>
Taxable Purchases	\$14,429.00

(F) Bill's taxable location machines are located in both the City of Columbia and rural Boone County. The Columbia machines accounted for \$12,825 (sixty percent (60%) of the taxable location sales of \$21,375) and the rural Boone County machines amounted to \$8,550 (forty percent (40%) of the taxable location sales of \$21,375). Bill must report sixty percent (60%) of his taxable purchases as taxable transactions for Columbia and remit tax at the combined state and local rate for the City of Columbia. Bill must report forty percent (40%) of taxable transactions for Boone County and remit tax at the combined state and local rate for Boone County.

Columbia taxable transactions	\$14,429 × .60 =	\$8,657
Boone County taxable transactions	\$14,429 × 40 =	\$5,772

(G) The Columbia taxable transactions are taxed at the combined state and local tax rate for the City of Columbia. The Boone County taxable transactions are to be taxed at the

combined state and local rate for Boone County.

(6) When a manufacturer sells the products s/he manufactured to other vendors and to the public through his/her own vending machines, the manufacturer shall self-assess tax on his/her vending machine sales at one hundred thirty-five percent (135%) of the average price at which the product is sold to other purchasers and vendors. Manufacturers who sell the products they manufacture through vending machines and do not make any sales to other purchasers or vendors shall self-assess tax on their vending machine sales at one hundred thirty-five percent (135%) of the total cost of the manufactured products, including materials, labor and manufacturing overhead.

(7) No allowance, credit or refund of sales tax shall be allowed to the vending machine owner or operator for loss due to spoilage, breakage or theft of items to be sold by the vending machine owner or operator through his/her machine.

*AUTHORITY: section 144.270, RSMo 1994. *Original rule filed Sept. 8, 1989, effective Jan. 26, 1990.*

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

12 CSR 10-3.866 Bulldozers for Agricultural Use
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 16, 1990, effective May 11, 1990. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.868 Not-for-Profit Civic, Social, Service or Fraternal Organizations—Criteria for Exemption

PURPOSE: This rule sets forth the criteria which must be met by an organization in order to claim sales tax exemption as a not-for-profit civic, social, service or fraternal organization.

(1) Sales made by or to not-for-profit civic, social, service or fraternal organizations in their regular functions and activities are subject to sales tax. If a civic, social, service or fraternal organization holds a fund-raising activity with the net proceeds from the activity going toward a recognized charitable or

civic purpose, these sales may not be subject to sales tax.

(2) Example: A fraternal organization operates a restaurant and bar. Gross receipts on sales at the bar and restaurant are subject to sales tax, even if part of the receipts are subsequently given to charitable causes. Food, beverages and other items sold at retail through the restaurant and bar shall be purchased under a resale exemption certificate and sales tax shall be remitted on the organization's gross receipts.

(3) Example: The same fraternal organization has a special dinner-dance from which the net proceeds will be given to XYZ charity. The fraternal organization may use its letter of exemption to purchase food and beverages and other items used for the dinner-dance tax free. Its total purchases are one thousand dollars (\$1,000). Gross receipts from admissions and sales are four thousand dollars (\$4,000). The organization is not required to collect or remit sales tax on the gross receipts derived from admission to the dinner-dance or from sales of other tangible personal property, provided the three thousand dollars (\$3,000) in net proceeds (\$4,000-\$1,000=\$3,000) are designated to XYZ charity.

(4) Example: The fraternal organization incurs normal expenses associated with operating the organization, such as utilities and repair parts for maintenance. These expenses are not considered part of the charitable or civic function of the organization and they are subject to sales tax. The organization shall not use its letter of exemption to avoid paying sales tax on operating expenses.

*AUTHORITY: section 144.270, RSMo 1994. *Original rule filed Jan. 16, 1990, effective June 28, 1990.*

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

12 CSR 10-3.870 Information Required to be Filed by Not-for-Profit Organizations Applying for a Sales Tax Exemption Letter

PURPOSE: This rule sets forth the requirements which must be met by a not-for-profit organization applying for a sales tax exemption letter.

(1) Religious and charitable organizations and institutions; public and private elementary and secondary schools; not-for-profit civic, social, service or fraternal organizations; not-for-profit public and private institutions of

higher education; eleemosynary and penal institutions; benevolent, scientific and educational associations formed to foster, encourage and promote the progress and improvement in the science of agriculture and in the raising and breeding of animals; nonprofit summer theatres applying for a letter of exemption from sales tax pursuant to section 144.030.2(19), (20), (21) or (22), RSMo are required to file the following documentation with the Department of Revenue:

(A) Application for Sales/Use Tax Exemption, form DOR-1746, and Missouri Sales/Use Tax Exemption Application Affidavit, Form DOR-1922;

(B) A copy of the Articles of Incorporation, Bylaws or both;

(C) A copy of the Section 501 tax exemption letter or ruling issued by the United States Department of Treasury, Internal Revenue Service;

(D) A copy of the tax exemption ruling issued by the assessing officers in each county in which the applicant's property is or will be located for property tax purposes;

(E) Financial statements of the organization for the previous three (3) years, indicating sources and amount of revenue, and a breakdown of the disbursements, or if just beginning the organization, an estimated budget for one (1) year;

(F) A copy of the not-for-profit certificate, registration or charter issued by the Missouri secretary of state's office, if registered or incorporated within Missouri; and

(G) Any other documents, statements and information as may reasonably be requested by the Department of Revenue.

(2) If any of the documents requested in subsections (1)(B)–(F) are not submitted with the application and affidavit, a letter of explanation must accompany the application.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 16, 1990, effective June 28, 1990.*

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

INSTRUCTIONS FOR COMPLETING THE MISSOURI SALES/USE TAX EXEMPTION APPLICATION

1. Do not write in the shaded block. It is for bureau use only.

2. **Missouri Tax I.D. Number.**

If you have been issued an 8-digit Missouri Tax I.D. Number (MITS Number), enter that number in the space provided, **otherwise, leave blank.**

3. **Type of Application.**

Place a check mark in the appropriate box. If you have previously been issued an exemption letter by the Missouri Department of Revenue, Tax Administration Bureau, check the box labeled "Renewal" and attach a copy of such letter.

4. **Dates and Code.**

Leave these shaded areas blank. They are for bureau use only.

5. **Qualifying for exemption as:**

Check the box which relates to your organization or agency.

NOTE: Do not check box number 3 unless you are a public elementary or secondary school.

Do not check box number 4 unless you are a private, not-for-profit elementary or secondary school, or a school of higher education accredited by an appropriate accrediting authority.

If you have an IRS exemption as an "educational" organization other than a school, you should check box number 8 and indicate the type of educational organization.

6. **IRS Exemption Code.**

Indicate the IRS exempt recognition code 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10) provided to your organization by the Internal Revenue Service. The box labeled "other" is for IRS exemption codes other than 501(c)(3), 501(c)(4), 501(c)(8) and 501(c)(10).

7. **Organization or Agency Name and Location.**

Enter the name of your organization or agency, the organization's or agency's address or location description, telephone number and county as indicated. Do not write in the shaded areas.

8. **Name and Address of Responsible Person.**

Enter the name and address of the individual responsible for this application and who the Department of Revenue should contact if additional information is required.

Examples of Responsible Persons are: Organization's president, secretary, treasurer; Church treasurer or Church official making application; Executive officer of organization.

9. **Type of Organizational Structure.**

Check one of the six boxes which best describes your organizational structure.

NOTE: Organizations which are incorporated.

a. If you are incorporated in Missouri, place a check in box number 5 and provide required information even though one of the other selections may also apply.

Example: Your organization is a foundation but is also incorporated. Check box number 5.

b. If you are an out-of-state corporation, and own property in Missouri, check box number 6 and provide the required information.

NOTE: Churches.

a. If you are incorporated, check box number 5 and provide the required information as indicated.

b. If not incorporated but you are affiliated with a denomination, check box number 4 and write "Denominational Church" in the space provided.

c. If not incorporated and not affiliated with a denomination, check box number 4 and write "ND Church" in the space provided.

10. **Mailing Address.**

If you want correspondence mailed to the organization's or agency's address or the responsible person's address, you need only check the appropriate box.

If correspondence should be mailed to an address other than the organization's or agency's or responsible person's address, check box number 5 and provide the address to be used for mailing purposes (i.e. Treasurer's address, accountant's address or lawyer's address, etc.)

FORM 1746

11. Location of Books and Records.

If books and records are kept at the organization's or agency's address, responsible person's address or the mailing address indicated in Question 11, you need only check the appropriate box.

If books and records are kept at an address (location) other than that of the organization or agency, responsible person or mailing address, check box number 4 and provide the address.

12. Identification of Organization or Agency Officers.

Provide the requested information for at least two (2) of the organization's or agency's officers.

In the case of churches, provide the requested information for at least two (2) of the church officials; i.e., Chairman of the Board of Deacons, Church financial officer, pastors, secretaries, etc.

13. Organizational Purposes.

Summarize the primary organizational purpose in one or two brief statements. Attach a supplemental sheet if necessary.

14. Organization or Agency Activities.

List the main activities of the organization or agency. Attach a supplemental sheet if necessary.

15. Real/Personal Property Exemption.

If your organization owns real and/or personal property, check the "Yes" box and attach a certification from your county assessor or collector exempting that real and/or personal property from taxation.

If your organization does not own any property (real and/or personal), check the "No" box.

16. Registration or Charter.

If your organization is registered or incorporated, you must attach a copy of the Certificate of Incorporation or registration as issued by the Missouri Secretary of State.

If you are an out-of-state corporation and own property in Missouri, you must register with the Missouri Secretary of State as a "foreign, not-for-profit corporation". A copy of this registration must be attached to this exemption application.

17. Bylaws.

Self-explanatory.

18. Financial History.

a. If your organization has been in existence over 3 years, attach the last 3 year completed financial history indicating all sources and amounts of income and a breakdown of expenditures.

b. If your organization has been in existence less than 3 years, attach last completed financial history for the number of years the organization has been in existence indicating all sources and amounts of income as well as a breakdown of expenditures.

c. If you are a new organization, attach an estimated budget for one (1) year indicating your expected sources and amounts of income as well as a breakdown of anticipated expenditures.

19. IRS Exemption Ruling.

If you are registered with the Internal Revenue Service and have received an exemption described in section 501(c), you must attach a copy of the most current letter of exemption issued to you by the IRS. (The letter must indicate the exempt status code).

If you have not received a letter from the Internal Revenue Service, you must contact your local IRS office and request an application for recognition of exemption or call toll-free 1-800-TAX-1040. (Form 1023 for 501(c)(3) status; Form 1024 for all other status codes).

IRS OFFICES:

608 E. Cherry Street, Columbia, Missouri 65201

3702 W. Truman Blvd., Jefferson City, Missouri 65109

1100 Main Street, City Center Square, Kansas City, Missouri 64105

1114 Market Street, St. Louis, Missouri 63101

NOTE: Denominational Churches are not required to submit the 501(c)(3) letter.

20. Signature.

Application must be signed by responsible person or officer of the organization or agency in order for exemption to be granted.



12 CSR 10-3.872 Sales of Newspapers and Other Publications

PURPOSE: This rule interprets the sales tax law as it applies to the sale of newspapers and interprets and applies the provisions of sections 144.010 and 144.021, RSMo.

(1) Newspapers, magazines, newsletters, periodicals, trade journals, publications, books and other printed materials are tangible personal property and the gross receipts from retail sales of these items are taxable. Publishers and other sellers of newspapers are engaged in the business of selling tangible personal property and they are subject to all rules applicable to sellers, except as otherwise specifically provided in this rule.

(2) Sales of newspapers for resale are not subject to sales tax. Sales of newspapers at retail are subject to sales tax.

(3) If a subscriber contracts directly with a person other than a publisher for the purchase of a newspaper, and that person bears the risk of loss for noncollection, then that person is making the retail sale and is subject to tax. If the subscriber contracts directly with the publisher, or if the publisher bears the risk of loss for noncollection, the publisher is subject to tax.

(A) Where the publisher sets or controls the seller's sales price, the seller shall collect and remit the tax to the publisher, and the publisher shall remit the tax to the department. The local tax shall be based on the publisher's principal place of business. The publisher shall be entitled to the timely filing discount if payment is made timely.

(B) Where the seller other than the publisher sets or controls the sales price, the seller shall obtain a retail sales tax license, collect and remit the tax directly to the department. The publisher shall obtain a resale exemption certificate from the seller on these sales.

(4) Publishers are liable for sales tax on mail subscriptions if the publisher handles the sale, collection, packaging and delivery to the post office. Sales tax on paid-in-advance subscriptions is due at the time payment is received. When subscriptions for newspapers are accepted by the seller within Missouri, the order is sent to a printer within Missouri and the publications are mailed after that to the subscriber within Missouri, the receipts from the subscriptions are subject to the state and local tax by the publisher. If the order is accepted in Missouri and sent to a printer outside Missouri and the publications are

mailed after that to the subscriber within Missouri, the receipts are subject to vendors' use tax. Where the seller accepts the order outside Missouri and the seller has nexus with Missouri, the seller's receipts are subject to Missouri sales/use tax.

(5) Sales of newspapers through vending machines are subject to sales tax at one hundred thirty-five percent (135%) of the wholesale price sold to sellers or vendors or the retail sales price, whichever is lower. The vendor who owns the newspaper sold through the vending machine is liable for the tax (see section 144.012, RSMo and 12 CSR 10-3.862).

(6) Newspaper publishers are manufacturers of tangible personal property intended to be sold ultimately at retail. Purchases of machinery and equipment by publishers may qualify for the machinery and equipment exemptions under section 144.030.2(4) and (5), RSMo (see 12 CSR 10-3.320, 12 CSR 10-3.326 and 12 CSR 10-3.327).

(7) Newsprint and ink, and rubber bands, twine, rain bags and other containers used to wrap or ship the newspapers in transit, may be purchased exempt from tax by publishers and sellers other than publishers, if they intend to sell the newspapers.

(8) Publishers may purchase inserts exempt from tax as component parts of the newspapers (see section 144.030.2(2), RSMo).

(9) Depending on the method of sale, newspaper sales are subject to local tax. Vending machine sales are taxed at the rate in effect where the machine is located. Sales by a seller other than the publisher are taxed at the rate in effect at the seller's place of business within Missouri, or if the seller does not have a place of business in Missouri, then at the rate in effect at the publisher's place of business in Missouri. Sales by publishers through employees, mail, direct retail and agents are taxed at the rate in effect at the publisher's place of business within Missouri. Over-the-counter sales by independent businesses, such as newsstands and grocers, are taxed at the rate in effect at their places of business.

(10) Sales of newspapers which include delivery, handling and postage costs are taxed on total gross receipts including delivery, handling and postage if title passes upon receipt of the newspaper (see 12 CSR 10-3.066).

*AUTHORITY: sections 144.010, 144.021 and 144.270, RSMo 1994. * Emergency rule filed*

Jan. 5, 1990, effective Jan. 15, 1990, expired May 15, 1990. Original rule filed Jan. 5, 1990, effective May 11, 1990.

**Original authority: 144.010, RSMo 1939, amended 1941, 1943, 1945, 1947, 1974, 1975, 1977, 1978, 1979, 1981, 1985, 1988, 1993; 144.021, RSMo 1965, amended 1982; and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

Hearst Publication v. Director of Revenue (Mo. banc 1989). Sales of newspapers are not exempt as a service, but are taxable as a sale of tangible personal property. The exemption of newspapers from sales tax provided in 12 CSR 10-3.110, was found by the court to be beyond the scope of the statute and the authority of the director of revenue.

12 CSR 10-3.874 Questions and Answers on Taxation of Newspapers

PURPOSE: This rule interprets the sales tax law as it applies to the sale of newspapers and interprets and applies the provisions of sections 144.010 and 144.021, RSMo.

(1) QUESTION: How is sales tax paid on newspapers?

(A) ANSWER: The answers to the questions in sections (2), (3) and (4) of this rule tell how the seller pays sales tax on newspapers, based upon how the sale is made.

(2) QUESTION: Must a newspaper publisher pay the sales tax on newspapers delivered by carriers?

(A) ANSWER: If the newspaper publisher contracts directly with the subscriber and the publisher bears the loss for noncollection, the publisher shall collect the tax.

(B) ANSWER: If the newspaper publisher sets or controls the seller's price (that is, the price the carrier charges), the carrier shall collect the tax, along with payment for the paper. The carrier then pays the tax to the publisher, who remits the tax to the department and receives a discount for timely payment.

(C) ANSWER: If a person other than the publisher (that is, the carrier) sets or controls his/her own price and bears the risk of loss for noncollection, the carrier is responsible for collecting and remitting state and local sales tax to the department.

(3) QUESTION: Must a newspaper publisher pay the sales tax on newspapers sold over-the-counter by retail stores?

(A) ANSWER: The retail store—such as a grocery, convenience store or pharmacy—is

normally making the retail sale. The publisher should not pay the sales tax on these sales. The publisher should sell the newspapers to the retail store under a resale exemption certificate. The retail store shall collect and remit state and local sales tax on the sale of the newspaper.

(4) QUESTION: Must a newspaper publisher pay the sales tax on newspapers sold through vending machines?

(A) ANSWER: Section 144.012, RSMo provides that the owner of newspapers sold through vending machines is making the retail sale. Thus, whoever owns the newspaper must remit the tax. If the newspaper publisher owns the newspapers sold through vending machines, the publisher shall remit the state and local sales tax based on the location of the vending machine. If a person other than the publisher purchases papers from the publisher and places them in the vending machine, that person must remit state and local sales tax.

(5) QUESTION: If a newspaper publisher does not control the seller's price and does not bear the risk of loss for noncollection, then may the publisher require all of its carriers to register with the Department of Revenue and collect and remit the sales tax to the department?

(A) ANSWER: Yes. A newspaper publisher can sell newspapers to carriers on a sale for resale basis, if the conditions described in section (5) are met. The carriers must be registered to collect and remit the tax, and the publisher must obtain a resale sales exemption certificate from every carrier to which it makes tax-free sales. The method provided in newspaper regulation 12 CSR 10-3.872(3)(A) is for the convenience of publishers, carriers and the Department of Revenue.

(6) QUESTION: Can a newspaper publisher set the individual copy price so the price and tax equal a round amount?

(A) ANSWER: Yes. The publisher can set its individual copy sales price so the newspaper price and the tax combined equal a round or convenient amount (that is, 47¢ for the paper, 3¢ for the tax, 50¢ combined). The banner on the paper's front page may state one (1) price (the combined paper and tax amount), provided somewhere in the paper, preferably on the masthead, the paper price and the amount are stated separately (see also answer to section (7)'s question).

(7) QUESTION: Can a publisher state one (1) individual copy price which includes dif-

ferent amounts of tax depending upon where the paper is sold?

(A) ANSWER: Yes. The publisher may set up flexible pricing structure so that the combined price and tax equal a desired amount, regardless of the local tax rate. For example, a paper sold in Columbia with a 6.675% tax rate may be priced at 47¢ and 3¢ tax to total 50¢. The same paper may be priced at 48¢ and 2¢ tax in rural Boone county, which has a 5.175% tax rate. The masthead may state that the paper is sold in different locations with varying sales tax rates.

(8) QUESTION: Given the answers to the questions in sections (2)—(7), on what price should sellers, other than the publisher, collect and remit tax?

(A) ANSWER: The seller should collect and remit tax on the advertised (front page banner) price, unless the seller sells at a different price. For example, if the newspaper banner says 50¢, and the seller sells the paper for 75¢, the seller should collect and remit tax on the 75¢.

(9) A carrier charges \$6 per month for a home-delivered subscription. Two questions—

(A) QUESTION: Can the carrier make the sales price equal a round amount?

1. ANSWER: The carrier can structure the sales price so the price and the tax combined equal a round amount. For example, \$5.65 per month for the paper, 35¢ for tax, \$6 combined.

(B) QUESTION: Does the carrier have to show the price and the tax separately on the sales receipt?

1. ANSWER: Yes. The sales receipt or stub needs to separately state the sales price and tax amount, or it shall be accompanied by a statement that sales tax is being charged.

(10) QUESTION: Same questions as subsections (9)(A) and (B) but the publisher is the seller.

(A) ANSWER: Same answers. The publisher can structure the sales price so the price and the tax combined equal a round amount. The sales receipt or stub needs to separately state the sales price and tax amount, or it shall be accompanied by a statement that sales tax is being charged.

(11) QUESTION: Is the postage cost element of a mail subscription subject to sales tax?

(A) ANSWER: It depends on how the sale is structured. The sales tax is levied on the seller's gross receipts from sale of the item. This includes postage unless title to the newspaper passes before the postage costs are

incurred. If the sale is structured so title to the paper passes from the publisher or other seller to the subscriber before the newspaper is mailed, the postage cost is not subject to tax. This rule applies for all industries. The sales receipt or subscription contract clearly shall indicate where or when passage of title occurs, the sales price and either postage price or the statement that postage is separated from the sales price and is not subject to sales tax.

(12) The questions in sections (12)—(14) deal with vending machine sales. QUESTION: If a publisher has vending machines in locations with varying local tax rates, on what sales price should the publisher charge tax?

(A) ANSWER: Under section 144.012, RSMo, the tax on vending machine sales is a tax on the vendor's purchase of the goods or cost of the goods, not the ultimate sale transaction, therefore, the retail sale price of a vending machine transaction is irrelevant, except as the limit. If the publisher owns the vending machine and the newspaper sold in it, the publisher should accrue and remit sales tax on vending machine sales at one hundred thirty-five percent (135%) of the average wholesale price to other sellers, not to exceed one hundred percent (100%) of the retail sales price.

1. Example 1: Publisher X wholesales its paper to other retailers for 20¢. It also sells the paper in its own vending machines for 35¢. The publisher should accrue tax on one hundred thirty-five percent (135%) of the average wholesale price ($20¢ \times 135\% = 27¢$) because it is less than the vending machine price.

2. Example 2: Publisher Y wholesales its papers to other retailers for 20¢. It also sells the paper in its own vending machines for 25¢. The publisher should accrue tax on the 25¢ vending machine sales price because it is less than one hundred thirty-five percent (135%) of the average wholesale price ($20¢ \times 135\% = 27¢$).

(13) QUESTION: Are sales of newspapers through vending machines located on the premises of exempt organizations subject to tax?

(A) ANSWER: Generally, no. Not all not-for-profit organizations' premises qualify for tax-exempt vending operations. Under section 144.012, RSMo, only those organizations which are exempt under section 144.030.2(19), RSMo qualify for exempt vending. These organizations are public elementary and secondary schools and religious and charitable organizations. Vendors should obtain a copy of the organization's exemption

letter prior to making tax-free vending transactions (see 12 CSR 10-3.862).

(14) QUESTION: At what tax rate should publishers or other vendors selling through vending machines self-accrue local sales tax?

(A) ANSWER: The rate in effect at the machine's location. Publishers and other persons selling newspapers through vending machines should register with the Department of Revenue to remit tax for each city and county in which they will make taxable vending machine sales. The seller's records, by an accounting method approved by the department, should indicate the volume of newspapers sold at each machine location.

(15) QUESTION: A newspaper publisher periodically prints extra copies of a newspaper for free distribution (that is, each Wednesday the publisher distributes a copy to every household in the city, whether a subscriber or not). What are the sales tax consequences of this type of transaction?

(A) ANSWER: Since the extra copies are not sold, no tax is due on their distribution. However, the publisher will owe tax on the purchase of the materials which were consumed in the production of the newspaper. If the free copies meet the definition of a newspaper, no tax is due on the purchase of the newspaper. However, the publisher should self-accrue sales or use tax as appropriate on any other materials used to produce and distribute the free papers, including ink, rubber bands, rain bags and the like.

(16) QUESTION: Publisher A prints a newspaper for publisher B and sells it to publisher B. Publisher B distributes the newspaper free of charge. What is the tax liability?

(A) ANSWER: Assuming that title to the newsprint transfers in a retail sale between publisher A and publisher B, publisher A should collect and remit sales tax on its gross sales to publisher B.

(17) QUESTION: Publisher A prints a newspaper for publisher B. Publisher B intends to sell the paper at retail. What is the tax liability?

(A) ANSWER: Publisher A should obtain a resale exemption certificate from B and not charge sales tax on its sales of the paper to B. Publisher B is liable to collect sales tax on its sales of the paper.

(18) QUESTION: Newspaper publisher A prints a one hundred percent (100%) advertising shopper which it distributes for free. What is publisher A's tax liability?

(A) ANSWER: The publisher is liable for sales or use tax on the purchase of all materials used to print the shopper, including the paper it is printed on.

(19) QUESTION: Newspaper publisher A prints a one hundred percent (100%) advertising shopper which it sells at retail. What is publisher A's tax liability?

(A) ANSWER: The seller is responsible for collecting and remitting tax on the gross receipts from retail sales of the shopper. The publisher may purchase all of the materials which become component parts of the shopper exempt from sales tax.

(20) QUESTION: Publisher A prints a shopper for publisher B and sells it to publisher B. Publisher B distributes the shopper free of charge. What is the tax liability?

(A) ANSWER: Publisher A must collect and remit sales tax on its gross receipts from sale of the shopper to publisher B. Publisher A should purchase the materials used to print the shopper under a resale exemption certificate.

(21) QUESTION: Publisher A prints a shopper for publisher B and sells it to publisher B. Publisher B sells the shopper at retail. What is the tax liability?

(A) ANSWER: Publisher A should obtain a resale exemption certificate from publisher B and sell publisher B the shopper tax free. Publisher B should collect and remit sales tax on its gross receipts from retail sales of the shopper. Publisher A should purchase the materials used to print the shopper under a resale exemption certificate.

(22) QUESTION: Newspaper publisher X prints an advertising supplement for a grocery store. At the direction of the grocery store owner, publisher X does four (4) different things with the supplements. Where does the incidence of tax rest in each of these cases?

(A) EXAMPLE: Some of the supplements are inserted into publisher X's newspaper.

1. ANSWER: The supplements which become part of publisher X's paper are not taxable because they become a component part of the newspaper which is sold at retail. However, if the supplements will be inserted in a free distribution edition of the paper (see section (16)), the publisher should charge the grocery store sales tax on the portion which will be distributed for free.

(B) EXAMPLE: Some of the supplements are shipped to another newspaper not owned by X for insertion in that newspaper which is sold at retail.

1. ANSWER: The grocery store should issue a component part exemption on the purchase of these supplements because they will be resold by the second publisher (that is, a pass through of the exemption).

(C) EXAMPLE: Some are given to the grocery store owner who gives them out in the store.

1. ANSWER: Publisher X should collect and remit tax on the sale of supplements which are to be distributed in the grocery store.

(D) EXAMPLE: Some are mailed to the grocery store's customers by publisher X using a mailing list provided by the grocery store.

1. ANSWER: Publisher X should collect and remit sales tax on the supplements which are mailed to persons on the grocery store's mailing list.

(23) QUESTION: Does a newspaper publisher have to collect and remit Missouri sales tax on newspaper subscriptions sold to out-of-state subscribers?

(A) ANSWER: No. If the title to the paper passes at the out-of-state location, the sale is an export sale and not subject to Missouri sales tax.

(24) QUESTION: A newspaper publisher prints a newspaper in Missouri. Some of the newspapers are sent to Kansas for free distribution. What is the tax consequence of this transaction?

(A) ANSWER: If the publisher is making the free distribution, it should self-accrue sales or use tax on the portion of its material purchases (other than newsprint) which go into the free distribution papers. If the publisher is selling the papers to another publisher who makes the free distribution, the tax depends on where title passes. If title passes to the second publisher in Missouri, then the sale is taxable in Missouri. If title passes to the second publisher in Kansas, then the sale is not taxable in Missouri.

(25) QUESTION: Missouri publisher prints a newspaper in Kansas for distribution in Kansas. Does it have any Missouri sales/use tax liability?

(A) ANSWER: No. Since the newspaper is printed in Kansas and distributed only in Kansas, no retail sale takes place in Missouri.

(26) QUESTION: A newspaper publisher has mail subscriptions. After printing the paper, the publisher labels and mails the papers. Can the publisher segregate labeling or handling charges to make these not part of the taxable sale amount?

(A) ANSWER: No. Labeling and handling are services necessary to get the paper ready to mail to the subscriber. Title cannot pass until after these services are complete and tax is due on these charges.

(27) QUESTION: What about newspapers published or sold by or to churches and other charitable and religious organizations?

(A) ANSWER: Review the organization's exemption letter for the exemption status. Churches or other charitable and religious organizations which are exempt on sales and purchases do not have to collect tax on sales of their newspapers or periodicals.

(28) QUESTION: A nonexempt organization's dues include a subscription fee for a newspaper, newsletter or other periodical. To what extent are these amounts taxable?

(A) ANSWER: If the nonexempt organization sells the newspaper or other periodical to nonmembers, these sales are taxable. If the nonexempt organization segregates the dues from the subscription price, then the gross receipts from subscription sales are taxable. If the nonexempt organization does not segregate the dues from the subscription price, the organization is not reselling the paper or periodical. Therefore, it will have to pay sales or use tax as appropriate on the purchase of the newspaper or periodical from the printer.

AUTHORITY: sections 144.010, 144.021 and 144.270, RSMo 1994. Emergency rule filed Jan. 23, 1990, effective Feb. 2, 1990, expired June 1, 1990. Original rule filed Jan. 23, 1990, effective May 11, 1990.*

**Original authority: 144.010, RSMo 1939, amended 1941, 1943, 1945, 1947, 1974, 1975, 1977, 1978, 1979, 1981, 1985, 1988, 1993; 144.021, RSMo 1965, amended 1982; and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

Hearst Publication v. Director of Revenue (Mo. banc 1989). Sales of newspapers are not exempt as a service, but are taxable as a sale of tangible personal property. The exemption of newspapers from sales tax provided in 12 CSR 10-3.110, was found by the court to be beyond the scope of the statute and the authority of the director of revenue.

12 CSR 10-3.876 Taxation of Sod Businesses

PURPOSE: This rule interprets the sales tax law as it applies to the production, installation and retail sale of sod.

(1) Definitions.

(A) Harvester—any person who severs growing grass from the earth for resale or otherwise as sod.

(B) Installer—any person engaged in the business of purchasing sod from either a sod producer or harvester for resale or use in a contract to improve real property.

(C) Integrated sod producer—any person who grows, harvests and installs sod under contracts for improvements to real property.

(D) Sod producer—any person engaged in the business of planting and cultivating grass for resale or otherwise as sod.

(2) Transactions Subject to Tax. The retail sale of sod is a taxable sale of tangible personal property. Sellers of sod are sellers for purposes of the sales and use tax laws in Chapter 144, RSMo and are subject to the rules applicable to sellers.

(A) Sod producers not acting as contractors are subject to sales tax on their sales of sod to any purchaser unless the sod producers receive from the purchaser an exemption certificate for resale or otherwise.

(B) Harvesters who purchase sod for resale from sod producers are subject to sales tax on their sales of sod to any purchaser unless the harvester receives from the purchaser an exemption certificate for resale or otherwise.

(C) Installers who purchase sod to improve real property in their capacity as contractors, subcontractors or the like are subject to sales tax on their purchases of sod. Under the sales tax law, the person who incorporates tangible personal property into real property as part of an improvement to real property is deemed to be the final user and consumer and must pay tax on his/her purchases.

(D) Installers who purchase sod for resale and not in their capacity as contractors, subcontractors or the like are subject to sales tax on their sales of sod to consumers. Any separately stated charges by the installer for labor to install the sod are not subject to tax if title to the sod passes prior to installation. The installer should furnish a certificate of exemption for resale to his/her sod supplier for these transactions.

(3) Amounts Subject to Tax. Sales of sod by sod producers, harvesters or other retail sellers are subject to tax upon total gross receipts. If the sale of the sod includes delivery and handling charges, the delivery charges are taxable if title to the sod passes at the destination point. If title passes at shipping point, the delivery and handling charges are not taxable if they are separately stated to the purchaser (see 12 CSR 10-3.066).

(4) Related Exemptions to Sales Tax.

(A) Retail sales to organizations exempt pursuant to section 144.030.2(19), (20) and (22), RSMo, including governmental agencies, are exempt from tax if the purchases are billed to and paid by the exempt entity and not by the contractor.

(B) Seed, lime and fertilizer purchased by sod producers are exempt from sales tax if the sod is ultimately sold at retail.

(C) Purchases of machinery and equipment by sod producers are exempt if the sod is grown to be sold ultimately at retail.

(D) Purchases of seed, fertilizer and limestone are not exempt if the sod is grown for use by an integrated producer in its capacity as a contractor.

(5) Example: The sod producer grows, harvests and sells sod to installers. Terms are free on board (FOB) the farm and delivery charges to installers' worksites are separately stated. Producer invoices installer for two thousand (2,000) yards of sod at fifty-five cents (55¢) per square yard and separately charges fifty dollars (\$50) for delivery. Sales tax is due at the appropriate rate on receipts of one thousand one hundred dollars (\$1,100) (2,000 × 55¢).

(6) Example: The sod producer sells sod to harvester who harvests sod and resells the sod to installers. Harvester furnishes sod producer an Exemption for Resale Certificate. Sod producer does not collect sales tax from harvester. Harvester charges sales tax on gross amount of the sales price to this customer. If harvester purchases two thousand (2,000) square yards of sod from sod producer at thirty cents (30¢) per square yard and sells it to installers for sixty cents (60¢) per square yard, sales tax is due on the one thousand two hundred dollars (\$1,200) (2,000 × 60¢) of receipts. Delivery charges, if separately stated, are not taxable.

(7) Example: Installer purchases two thousand (2,000) square yards of sod FOB the farm from sod producer. Installer has agreed with its customer to sell customer sod for fifty-five cents (55¢) per square yard and separately agreed to install the sod for fifteen cents (15¢) per square yard. Installer should provide sod producer with a Certificate of Exemption for Resale and charge sales tax to its customer on one thousand one hundred dollars (\$1,100) at the appropriate rate.

(8) Example: Installer purchases two thousand (2,000) square yards of sod as personal property from producer for thirty cents (30¢) per square yard. Installer contracts separately with a harvester for cutting and delivery of

sod for twenty cents (20) per square yard. Installer contracts with his/her customer for installation of sod at eighty cents (80) per square yard. Producer should collect sales tax from installer at the appropriate rate on six hundred dollars (\$600) (2,000 × 30¢) of receipts.

(9) Example: An integrated sod producer grows, harvests and installs two thousand (2,000) square yards of sod as part of a contract to improve real property. The contract calls for a price of one dollar (\$1) per square yard of sod installed. The sod grower needs only to pay tax on the seed, fertilizer and limestone. The two thousand dollar (\$2,000) receipts from the installation contract are not taxable.

(10) Example: An integrated sod producer who normally acts as a contractor occasionally sells sod at retail to homeowners. In these retail sales cases, the integrated operator should charge tax on the gross receipts of the sale to the homeowner and purchase the seed, fertilizer and limestone tax exempt pursuant to section 144.030.2(1), RSMo.

(11) Example: An integrated sod producer acting as a contractor is able to have two (2) cuttings of sod with each seeding. The first cutting results from the seeding and the second cutting results from regrowth. The integrated sod producer has no taxable event on those cuttings which are produced from regrowth.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed July 2, 1990, effective Dec. 31, 1990.*

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

12 CSR 10-3.878 Certificate of Deposit
(Rescinded March 30, 2001)

AUTHORITY: sections 144.087 and 144.270, RSMo 1994. Emergency rule filed Sept. 18, 1990, effective Sept. 28, 1990, expired Jan. 25, 1991. Original rule filed Sept. 18, 1990, effective Feb. 14, 1991. Amended: Filed Feb. 4, 1991, effective June 10, 1991. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.880 Sales of Postage Stamps

PURPOSE: This rule clarifies the application of the sales tax to the sale of postage stamps.

(1) Sales of uncanceled United States postage stamps, for purposes other than philatelic or investment, which are used for postage are considered sales of services and not subject to sales tax.

(2) Sales of uncanceled United States and foreign postage stamps for philatelic or investment purposes are deemed to be sales of tangible personal property and are subject to sales tax. Sale prices over one hundred fifty percent (150%) of the face value of the stamp shall be construed as prima facie evidence of a sale for philatelic or investment purposes.

(3) All sales of cancelled postage stamps, regardless of the sales price, are deemed to be sales of tangible personal property and are subject to sales tax.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 16, 1990, effective March 14, 1991.*

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

12 CSR 10-3.882 Accrual Basis Reporting
(Rescinded October 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 25, 1990, effective March 14, 1991. Rescinded: Filed April 5, 2001, effective Oct. 30, 2001.

12 CSR 10-3.884 Basic Steelmaking Exemption—Sales Tax

PURPOSE: This rule explains the circumstances under which the purchases of electricity and gas by basic steelmakers are exempt from sales/use tax and the procedure for obtaining a basic steelmaking exemption.

(1) The sale of electricity or gas, whether natural, artificial or propane, which is ultimately consumed in connection with basic steelmaking in Missouri is exempt from sales tax (see section 144.036, RSMo). The exemption includes sales of electricity and gas consumed in the processing and fabricating of steel in addition to basic steelmaking if the processing or fabricating are part of the taxpayer's integrated plant that performs basic steelmaking.

(2) Basic steelmaking refers to smelting and refining molten pig iron or other metals to produce steel or steel products by rolling, drawing, casting and alloying metals. It does

not include the mere melting of scrap steel which is cast into a new steel product. In order for the melting of scrap steel to qualify as basic steelmaking, the molten metal must be altered to meet customer specifications by adding additional raw material or alloys and thus changing the composition of the steel.

(3) Example: Purchases of electricity or gas used in smelting and refining molten pig iron to produce steel products by casting are exempt. However, purchases of electricity or gas used in secondary processing of steel which is not performed at the taxpayer's integrated plant that performs basic steelmaking are not exempt under section 144.036, RSMo. For example, if a taxpayer engages in basic steelmaking at location A and operates a stamping plant at location B which is not physically connected with, or part of, the basic steelmaking facility, the taxpayer's purchases of electricity and gas for the stamping plant at location B would not be exempt under section 144.036, RSMo.

(4) All consumers of electrical energy or gas who desire to qualify for this exemption must request a steelmaking exemption authorization from the director of revenue. After authorization is issued by the director of revenue, the recipient shall file, on or before the due date, a return with the director, identifying the amount of electrical energy purchased tax exempt and remit the appropriate tax on electrical energy or gas consumed which is not covered by this exemption. An example of electrical energy or gas that would not qualify for the exemption would include energy used in office, storage or warehousing operations.

(5) Sellers making sales of electricity or gas to purchasers claiming the steelmaking exemption are required to obtain letters of exemption from the purchasers as evidence of the exempt sales claimed (see section 144.210, RSMo). Purchasers may purchase all electricity and gas exempt and then self-accrue tax on the portion not covered by the exemption as provided in section (4).

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Nov. 15, 1990, effective June 10, 1991.*

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

12 CSR 10-3.886 Exemption For Construction Materials Sold to Exempt Entities

PURPOSE: This rule interprets the sales tax law as it applies to construction materials sold to certain exempt entities pursuant to section 144.062, RSMo.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) Section 144.062, RSMo exempts certain retail sales of materials used to construct, repair or remodel facilities for—

(A) Political subdivisions exempt from taxation under Section 39(10) of Article III of the Constitution of Missouri;

(B) Organizations or schools exempt from sales tax under the provisions of section 144.030.2(19), RSMo;

(C) Institutions of higher education exempt from sales tax under the provisions of section 144.030.2(20), RSMo; or

(D) Private not-for-profit elementary or secondary schools exempt from sales tax under section 144.030.2(22), RSMo.

(2) Retail sales of tangible personal property and materials for the purpose of constructing, repairing or remodeling facilities for exempt entities are exempt if the materials are separately billed to and paid for by the exempt entity or when the exempt entity furnishes to the contractor a project exemption certificate authorizing such purchases (see 12 CSR 10-3.388).

(3) In order for a seller to make an exempt sale to an exempt entity or to a contractor who is issued a project exemption certificate by an exempt entity, the seller must hold a retail sales license as required by section 144.083, RSMo.

(4) There must be sufficient documentation to prove that a retail sale of materials was made to a tax exempt entity. Sellers of materials, who are also suppliers and contractors for the

same materials, shall pay tax upon the purchase of those materials or upon the withdrawal of those materials from inventory unless—

(A) The materials are separately billed to and paid for by the exempt entity; or

(B) The exempt entity provides a project exemption certificate as set forth in section 144.062, RSMo to the seller/supplier/contractor.

AUTHORITY: sections 144.062 and 144.270, RSMo 1994. Emergency rule filed Oct. 16, 1991, effective Oct. 26, 1991, expired Feb. 22, 1992. Original rule filed June 18, 1991, effective Jan. 13, 1992. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective April 30, 1995.*

**Original authority: 144.062, RSMo 1988, amended 1994 and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1961.*

Becker Electric Company, Inc. v. Director of Revenue, 749 SW2d 403 (Mo. banc 1988). A purchaser was determined to be the person who acquires title to, or ownership of, tangible personal property, or to whom is tendered services, in exchange for a valuable consideration. Becker was not the purchaser here because the materials were billed to the Housing Authority and the consideration was paid by the Housing Authority. If the materials are billed to the exempt organization and paid for from funds of the exempt organization, then the purchase is exempt if the materials are used in furtherance of the exempt purpose of the organization.

12 CSR 10-3.888 Sales "In Commerce" Between Missouri and Other States

PURPOSE: This rule interprets the sales tax as it applies to retail sales made "commerce" between Missouri and another state and applies section 144.030.1., RSMo.

(1) Except as otherwise provided in this rule, a Missouri retail sale of tangible personal property for delivery to an out-of-state location generally shall be exempt from Missouri sales tax if delivery is made by the seller or by a third-party common or contract carrier and the purchaser issues a written claim of exemption to the seller (see rules on exemption certificates 12 CSR 10-3.532, 12 CSR 10-3.534, 12 CSR 10-3.536 and 12 CSR 10-3.538). Where a contract requires a seller to make delivery to a non-Missouri location and

the goods are intended for use outside of Missouri, and title and ownership pass from the seller to purchaser outside of Missouri, the sale is not a Missouri retail sale.

(2) Where delivery is made from an out-of-state location to a Missouri location, the sale generally is subject to Missouri use tax. Credit for sales taxes properly paid to another state will be allowed against the use tax liability.

(3) Missouri retail sales transactions completed prior to the time goods begin their interstate journey are taxable Missouri sales unless otherwise exempted. For purposes of this rule, a sales transaction is completed when title or ownership has transferred to the purchaser. Where the seller agrees to hold or store the goods for the purchaser, or where the seller delivers the goods to a Missouri location for use or storage prior to shipment, the sale is subject to Missouri sales tax. Where the seller delivers goods to a third-party carrier and the carrier temporarily stores the goods prior to shipment out-of-state, the goods are "commerce".

(4) A purchaser cannot purchase property for use, storage or consumption in Missouri and subsequently claim an "commerce" exemption if the property is later shipped out-of-state.

(5) For purposes of the "commerce" exemption, a purchaser may not act as a common carrier or contract carrier for its own goods. When a carrier takes delivery in Missouri of goods the carrier is purchasing, the sale is subject to Missouri sales tax.

(6) Where a purchaser arranges for delivery to an out-of-state location by a third-party carrier, the sale is subject to Missouri sales tax if title or ownership passes from the seller to the purchaser prior to the goods being placed in the possession of the carrier. If title and ownership pass from the seller to the purchaser after the goods are in the possession of the carrier, then the sale is not subject to Missouri sales tax. The goods are presumed to be "commerce" when they are placed in the possession of a carrier for interstate shipment. The true substance of the transaction, as evidenced by the intent of the parties, will determine when title and ownership pass.

(7) Where a purchaser arranges for delivery to an out-of-state location in the purchaser's vehicle or in a vehicle leased or rented by the purchaser, the sale is subject to Missouri sales tax.

(8) A purchaser may issue a written claim of exemption by clearly indicating that the in commerce exemption is claimed on a Multi-state Sales Tax Exemption Certificate. A purchaser also may make a claim of exemption by presenting the seller with any other written claim which clearly indicates that the “in commerce” exemption of section 144.030.1, RSMo is being claimed on the purchase (see rules on exemption certificates 12 CSR 10-3.532, 12 CSR 10-3.534, 12 CSR 10-3.536 and 12 CSR 10-3.538).

(9) Mail order sales to addresses outside of Missouri will be presumed to be non-Missouri retail sales. As such, no exemption certificate will need to be maintained by the in-state seller as evidence of exemption. Seller shall maintain sufficient records and supporting documentation to establish which Missouri mail order sales were sent to addresses outside of Missouri.

(10) Example 1: ABC Company of Missouri sells materials to DEF Company of Iowa. Under the terms of the sale, ABC Company arranges for delivery from its Missouri location to DEF Company’s Iowa location. Regardless of whether the materials are delivered by ABC’s own vehicles or by hired transport, the sale is a non-Missouri sale and is not subject to Missouri sales tax.

(11) Example 2: ABC Company of Missouri sells materials to DEF Company of Iowa. Under the terms of the sale, DEF Company will arrange for pick-up at ABC’s dock. The sale is a Missouri retail sale subject to sales tax unless—a) DEF Company issues a written claim of “commerce” exemption, and b) DEF Company arranges for a common or contract carrier to pick-up the materials in the normal course of the carrier’s business, and c) title passes after the materials are loaded on the carrier. If DEF Company arranges for pick-up of the materials through its own vehicles or by leased or rented vehicles, the sale is subject to Missouri sales tax.

(12) Example 3: ABC Company of Missouri sells materials to DEF Company of Iowa. Under the terms of the sale, ABC Company is to segregate and store the goods until DEF Company arranges for pick-up of the materials. The sale is a Missouri retail sale subject to sales tax.

(13) Example 4: ABC Company of Missouri sells materials to DEF Company of Iowa. Under the terms of the sale, ABC Company is to ship the goods to a Missouri location for storage until DEF Company arranges for

pick-up of the materials. The sale is a Missouri retail sale subject to sales tax.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 31, 1992, effective Sept. 6, 1992.*

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

Amoco Oil Company v. Director of Revenue, Case No. 89-001011RS (A.H.C. 01/07/91). Sales of goods were exempt as in commerce where title passed to the buyer upon delivery in Missouri to a carrier, common or contract, for shipment out-of-state. In order for a Missouri retail sale to be exempt as being “in commerce”, a component of the sales transaction must depend upon the importation or the exportation of the goods from or to another state.

Western Trailer Service, Inc. v. Lepage, 575 SW2d 173 (Mo. banc 1978). Under contract, employees of a trailer company went to Kansas, picked up trailers and brought them into the state and, after repairs were made and repair parts installed, the trailers were returned under contract to Kansas by trailer company employees. Importation of the trailers from Kansas to Missouri was a component part of the transaction. The retail sales were made in commerce between Missouri and Kansas.

Overland Steel, Inc. v. Director of Revenue, 647 SW2d 535 (Mo. banc 1983). Overland Steel was both a retailer and a contractor. Overland purchased materials which were ultimately installed for Kansas customers. These materials were not resold by Overland but were consumed by the corporation in its capacity as a contractor. The sale of materials from the manufacturer to Overland was complete before Overland entered into the Kansas construction contracts. There was no evidence indicating transportation of the goods to Kansas was an integral part of the sale.

Bratton Corporation v. Director of Revenue, 783 SW2d 891 (Mo. banc 1990). Goods delivered to a corporation in Missouri upon purchase from Missouri vendors were not “in commerce” and could not avoid the sales tax, despite buyer’s intention of shipping the goods out-of-state shortly after delivery.

Metro Crown International, Inc. v. Director of Revenue, Case No. 89-000904RS, (A.H.C. 04/20/90). Sales were Missouri retail sales where buyer took possession of goods from seller in Missouri, despite con-

tract provision that title would not pass until arrival out-of-state. Tax liability depends on the economic reality of the transaction, not on the legal fictions of boilerplate contract provisions.

12 CSR 10-3.890 Area Betterment, Tourism or Marketing Program Fees To Be Included As Taxable Gross Receipts (Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 30, 1992, effective June 7, 1993. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.892 Light Aircraft—Light Aircraft Kits

PURPOSE: This rule interprets the sales tax law as it applies to the purchase of new light aircraft, light aircraft kits, and such parts and components.

(1) All sales of new light aircraft, light aircraft kits, parts or components manufactured or substantially completed within this state are exempt from sales tax when purchased by a qualified purchaser. It is the responsibility of the purchaser to provide to the seller a statement that s/he is indeed a qualified purchaser.

(2) A qualified purchaser is a purchaser of a light aircraft, light aircraft kit, parts or components who is a nonresident of this state, who will transport the light aircraft, light aircraft kit, parts or components outside the state of Missouri within ten (10) days after the date of purchase, and who will register any light aircraft so purchased in another state or country.

(3) Light aircraft shall be considered a light airplane that seats no more than four (4) persons, with a gross weight of three thousand (3,000) pounds or less, which is primarily used for recreational flying or flight training.

(4) A light aircraft kit shall be considered factory manufactured parts and components, including engine, propeller, instruments, wheels, brakes, and air frame parts which make up a complete aircraft kit or partial kit designed to be assembled into light aircraft and then operated by a qualified purchaser for recreational or educational purposes.

(5) Parts and components shall include manufactured light aircraft parts, including air frame and engine parts, that are required by

the qualified purchaser to complete a light aircraft kit, or spare or replacement parts for an already completed light aircraft.

AUTHORITY: section 144.270, RSMo 1994. Emergency rule filed Aug. 18, 1994, effective Aug. 28, 1994, expires Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Original rule filed Aug. 18, 1994, effective Feb. 26, 1995.*

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

12 CSR 10-3.894 Animal Bedding—Exemption

PURPOSE: This rule interprets the sales tax law as it applies to animal bedding.

(1) All sales of bedding used in the production of livestock or poultry for food or fiber are exempt from sales tax. Examples of bedding may include, but are not limited to, wood shavings, straw and shredded paper.

AUTHORITY: section 144.270, RSMo 1994. Emergency rule filed Aug. 18, 1994, effective Aug. 28, 1994, expires Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Original rule filed Aug. 18, 1994, effective Feb. 26, 1995.*

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

12 CSR 10-3.896 Auctioneers, Brokers and Agents

PURPOSE: This rule interprets the sales tax law as it applies to sales of tangible personal property where an auctioneer, broker, or agent is involved in the sale.

(1) An auctioneer, broker or agent, acting on behalf of an unknown or undisclosed principal, who sells tangible personal property at public or private auction, must be registered with the Department of Revenue and must collect and remit the sales tax. Such auctioneer, broker or agent is considered the seller of the tangible personal property.

(2) An auctioneer, broker or agent, who discloses the principal, will not be considered the seller of the tangible personal property and will not be required to collect and remit sales tax if s/he merely serves as a conduit between the buyer and owner of the property, and does not actually sell the property or

receive consideration from the buyer for the sale. A livestock auction market's receipt of payment from a buyer which is subsequently deposited into the market's custodial account for shippers' proceeds and is ultimately remitted to the seller (shipper), is not considered as receipt of consideration from the buyer. The owner of the property or the person who receives consideration from the buyer for the sale is responsible for the collection of any applicable sales tax.

(3) An auctioneer, broker or agent who sells tangible personal property at public or private auction in the course of the partial or complete liquidation of a household, farm or non-business enterprise is not required to collect and remit sales tax on the gross receipts from such sales.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 28, 1995, effective May 30, 1996.*

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

12 CSR 10-3.898 Non-Reusable and Reusable Items (Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Nov. 26, 1997, effective May 30, 1998. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.