

**Rules of
Department of Revenue
Division 10—Director of Revenue
Chapter 5—City Sales Tax, Transportation Sales Tax
and Public Mass Transportation Tax**

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Title 12—DEPARTMENT OF
REVENUE
Division 10—Director of Revenue
Chapter 5—City Sales Tax,
Transportation Sales Tax and
Public Mass Transportation Tax

**12 CSR 10-5.005 Date of Delivery Deter-
mines Applicability**

*PURPOSE: This rule indicates the deliv-
ery date is controlling in determining
applicability of city sales tax.*

(1) In determining whether a sale is subject to a recently enacted city sales tax, the date of delivery is the determining factor. If the tangible personal property sold is delivered after the effective date of the tax, it is subject to the city sales tax even though the contract, purchase order or sales slip may have been executed prior to the effective date of the city sales tax.

*Auth: section 94.530, RSMo (1986).
C.S.T. regulation 510-1 originally filed
Oct. 8, 1975, effective Nov. 7, 1975. Refiled
Dec. 31, 1975, effective Jan. 10, 1976.*

12 CSR 10-5.010 Layaways

*PURPOSE: This rule indicates the date
of delivery of layaways is controlling in
determining applicability of city sales
tax.*

(1) When a person purchases tangible personal property to be held under a layaway plan and the property is held by the seller until complete payment is received, the seller of the property is subject to city sales tax if the date of delivery is after the effective date of a city sales tax.

*Auth: section 94.530, RSMo (1986).
C.S.T. regulation 510-1A originally filed
Dec. 31, 1975, effective Jan. 10, 1976.*

12 CSR 10-5.015 Effective Date

*PURPOSE: This rule prescribes the
effective date of a city sales tax and
interprets and applies section 94.510,
RSMo (1986).*

(1) After the director receives notice of the adoption of the city sales tax, the tax becomes effective the first day of the second calendar quarter following notification.

(A) Example. If an election was held in November (fourth quarter), and the notice was provided to the director within ten (10) days, the effective date of the tax would be April 1 of the following year.

*Auth: section 94.530, RSMo (1986).
C.S.T. regulation 510-2 originally filed
Oct. 28, 1975, effective Nov. 7, 1975.*

**Op. Atty. Gen. No. 359, Phelps, 9-10-
69.** A city cannot, before October 13, 1969 the effective date of the city sales tax act (House Bill No. 243 of the 75th General Assembly), pass an ordinance levying a sales tax in accordance with the provisions of the act and call a special election thereon to be held subsequent to the effective date of the act.

12 CSR 10-5.020 Tax Imposed

*PURPOSE: This rule prescribes that the
city sales tax is imposed on sellers and
interprets and applies section 94.520,
RSMo (1986).*

(1) The city sales tax is imposed on sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable services. When reporting and remitting city sales tax to the director, the seller is required to send one (1) check for and will be held liable for computing his/her liability on the basis of a combined rate of tax by adding the appropriate city tax and the current state tax.

*Auth: section 94.530, RSMo (1986).
C.S.T. regulation 520-1 originally filed
Oct. 28, 1975, effective Nov. 7, 1975.*

**12 CSR 10-5.025 Location of Machine De-
termines**

*PURPOSE: This rule provides that the
location of vending machines determines
the applicability of city sales tax.*

(1) The location of a vending machine, not the location of the owner of the vending machine, determines the applicability of city sales tax. All vending machines located within the corporate city limits of a city imposing a city sales tax are subject to the city sales tax of the city in which they are located.

*Auth: section 94.530, RSMo (1986).
C.S.T. regulation 520-1A originally filed
Dec. 31, 1975, effective Jan. 10, 1976.*

**12 CSR 10-5.030 State Sales Tax Rule
Apply**

*PURPOSE: This rule indicates the
applicability of state sales tax rules and
interprets and applies section 94.540.1.,
RSMo (1986).*

(1) All sales tax rules pertaining to sections 144.010 to 144.510, RSMo (1986) apply to the city sales tax sections 94.500 to 94.570, RSMo (1986) unless specifically stated otherwise.

*Auth: section 94.530, RSMo (1986).
C.S.T. regulation 520-2 originally filed
Oct. 28, 1975, effective Nov. 7, 1975.*

12 CSR 10-5.035 Deductions

*PURPOSE: This rule indicates that the
deductions contained in certain sections
of the state sales tax law also apply to
city sales tax and interprets and applies
section 94.540.1., RSMo (1986).*

(1) The deductions, as they apply to the state sales tax law, contained in sections 144.030, 144.040 and 144.042, RSMo (1986) also apply to the city sales tax law. Specific reference should be made to these sections for further particulars.

*Auth: section 94.530, RSMo (1986).
C.S.T. regulation 540-1 originally filed
Oct. 28, 1975, effective Nov. 7, 1975.
Refiled Dec. 31, 1975, effective Jan. 10,
1976.*

**12 CSR 10-5.040 Seller Not Entitled
(Rescinded January 12, 1985)**

12 CSR 10-5.045 Seller Entitled

*PURPOSE: This rule indicates that the
timely payment of taxes entitles the
seller to a deduction and interprets and
applies section 144.140, RSMo (1986).*

(1) For 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.

(A) Example. Mr. C operates a retail store and the amount of tax levied and imposed is between fifteen dollars (\$15) and two hundred fifty dollars (\$250) per month. Therefore, Mr. C files a quarterly return due on or before the thirtieth day of the month following each quarter. If the return is paid and mailed on



or before the thirtieth, Mr. C is entitled to the two percent (2%) discount. The postmark date is prima facie evidence of timely payment.

Auth: section 94.530, RSMo (1986). C.S.T. regulation 540-3 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled Dec. 31, 1975, effective Jan. 10, 1976.

Farm and Home Savings Assn. v. Spradling, 538 SW2d 313 (Mo. 1976). Purpose of allowing retention of two percent (2%) tax due was to compensate seller who was required, as part of his regular course of business, to collect sales tax from buyer, keep records and make remittance to director, all of which could increase seller's cost of doing business; it was not primary purpose of statute to give tax reduction simply because tax was paid when due, although deductions may very well encourage prompt payment.

12 CSR 10-5.050 When City Tax Applies

PURPOSE: This rule aids in the determination of when city sales tax applies and interprets and applies section 94.540.5., RSMo (1986).

(1) For the purposes of the city sales tax law, all retail sales are conclusively presumed to have been consummated at the place of business of the seller/retailer without regard to the location or point of passage of title. The privilege of engaging in the business of selling tangible personal property or rendering taxable services within taxing cities subject the seller to the city sales tax law.

(2) The sale is subject to city sales tax when a seller makes a taxable sale to a purchaser at the seller's place of business or when the order is taken by mail, telephone or by a salesman, even though the property is to be delivered from the seller's place of business located within such taxing jurisdiction to the customer at a point in Missouri outside the limits of the taxing jurisdiction. The sale is consummated at the seller's location, not at the point of delivery.

(3) Example. Mr. Mars is a customer of the Orange Company, a Missouri seller located in Sun City, a local taxing jurisdiction. Mr. Mars orders merchandise from Orange Company for delivery to his place of business outside the corporate city limits of Sun City. Orange Company delivers the merchandise from the stock of goods on hand to Mr. Mars. Orange

Company is subject to Sun City's city sales tax on the merchandise sold to Mr. Mars.

(4) Example. The Mighty Milk Company is located in Sun City, a local taxing jurisdiction. Mighty Milk has route salesmen and independent salesmen who sell milk in Sun City and in neighboring cities. Some of the neighboring cities have their own local tax and some do not. All sales of Mighty Milk's route salesmen and the independent salesmen are subject to Sun City's city sales tax since the sales are considered to be consummated at the place of business from which the salesman works.

Auth: section 94.530, RSMo (1986). C.S.T. regulation 540-4 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled Dec. 31, 1975, effective Jan. 10, 1976.

Fabick and Co. v. Schaffner, 492 SW2d 737 (Mo. 1973). Jurisdictional arguments based upon lack of reciprocal benefit under city tax law are unavailing because the retailer is within the city imposing the tax and is the recipient of governmental services provided by the city. The contention that only a rebuttable presumption was intended by the phrase "shall be deemed to be consummated at the place of business of the retailer" was rejected. The obvious purpose of the premium was to fix the taxable situs of transactions which might have a nexus with more than one municipality. City sales tax of Jefferson City, like the state sales tax, is a gross receipts tax, not a transactions tax.

Due to similarity with rule, see also section 94.540.5., RSMo.

12 CSR 10-5.055 Determining Which Tax Applies

PURPOSE: This rule aids in determining the place of business where the sale is consummated for city sales tax purposes and interprets and applies section 94.540.5., RSMo (1986).

(1) If a seller has more than one (1) place of business in Missouri which participates in a sale, the local tax of the location where the initial order was taken shall apply. For the purposes of this rule, place of business shall include, but not be limited to, sales offices, administrative offices, catalog stores, retail stores, warehouses and factories. Where the seller has no recognizable physical facility, the place of business of the seller shall be where the purchaser actually obtains possession.

(A) Example. The Story Company has a sales office in Tall City and a combination sales office and warehouse in Short City. Both Tall City and Short City have a city sales tax. The Story Company takes an order at its Tall City location from a customer located in Long City which also has a city sales tax. The Story Company ships the order from its warehouse in Short City to the customer in Long City. Tall City's city sales tax would apply as the initial order was taken in Tall City.

Auth: section 94.530, RSMo (1978). C.S.T. regulation 540-4A originally filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

Fabick and Co. v. Schaffner, 492 SW2d 737 (Mo. 1973). Jurisdictional arguments based upon lack of reciprocal benefit under city tax law are unavailing because the retailer is within the city imposing the tax and is the recipient of governmental services provided by the city. The contention that only a rebuttable presumption was intended by the phrase "shall be deemed to be consummated at the place of business of the retailer" was rejected. The obvious purpose of the premium was to fix the taxable situs of transactions which might have a nexus with more than one municipality. City sales tax of Jefferson City, like to state sales tax, is a gross receipts tax, not a transactions tax.

Due to similarity with rule, see also section 94.540.5., RSMo.

12 CSR 10-5.060 City Tax Applies—Delivery Outside Jurisdiction

PURPOSE: This rule provides that delivery from a seller located within a taxing city to a purchaser outside the taxing city still makes the sale subject to the city sales tax and interprets and applies section 94.530, RSMo (1986).

(1) When a seller, located within a taxing city, makes a taxable sale to a purchaser and the property is to be delivered from a point in Missouri but outside the limits of the taxing city to another such point in Missouri the sale is subject to the city sales tax.

(A) Example. Ms. Venus is a customer of the Orange Company a Missouri seller located in Sun City, a local taxing jurisdiction. Ms. Venus orders merchandise from Orange Company for delivery at her home located outside the



corporate city limits of Sun City. Orange Company delivers the merchandise to Ms. Venus from its warehouse located in Round City. Orange Company is subject to Sun City's city sales tax on the merchandise sold to Ms. Venus.

*Auth: section 94.530, RSMo (1986).
C.S.T. Regulation 540-5 originally filed
Oct. 28, 1975, effective Nov. 7, 1975.*

*Fabick and Co. v. Schaffner, 492 SW2d
737 (1973). Jurisdictional arguments
based upon lack of reciprocal benefit
under city tax law are unavailing
because the retailer is within the city
imposing the tax and is the recipient
of governmental services provided by
the city. The contention that only a
rebuttable presumption was intended
by the phrase "shall be deemed to be
consummated at the place of business
of the retailer" was rejected. The
obvious purpose of the premium was to
fix the taxable situs of transactions
which might have a nexus with more
than one municipality. City sales tax
of Jefferson City, like to state sales tax,
is a gross receipts tax, not a transac-
tions tax.*

*See also, Mobil-Teria Catering Co., Inc.
v. Spradling, 576 SW2d 282 (Mo. en banc
1978). For purposes of public mass
transportation tax and transportation
sales, "place of business" of mobile food
service business referred to place where
trucks were parked, wares displayed,
initial orders taken and filled, payments
made and sales consummated. Thus,
the public mass transportation tax or
transportation sales tax could not be
imposed by municipal corporation on
gross receipts from places of business
outside the geographical limits of the
city of municipality.*

*Due to similarity with rule, see also
section 94.540.5, RSMo.*

12 CSR 10-5.065 Items Taken from Inventory

PURPOSE: This rule provides that the taxpayer is liable for city sales tax where items purchased under a resale exemption are subsequently withdrawn from inventory.

(1) When a person who purchases items under a resale exemption certificate withdraws items from inventory for personal use, the items are

subject to city sales tax if they were purchased within a city imposing a city sales tax regardless of where the items are used. The taxpayer must report the city sales tax due on his next return.

(A) Example. Mr. Rusty operates an antique store in Gold City, a city which does not have a city sales tax. Mr. Rusty purchases three (3) antique rockers from a dealer located in Mountain City and issues the dealer a resale exemption certificate. Mr. Rusty decides to withdraw one (1) rocker from his inventory and use it in his home. Mountain City has a city sales tax. Therefore, since the rocker was purchased in Mountain City, Mr. Rusty must remit both state and city sales tax based on the cost of the rocker on his next return.

(B) Example. Mr. Kold operates an appliance store in White City, a city which has a city sales tax. Mr. Kold purchases all of his appliances from a company located in Heavy City which also has a city sales tax. Mr. Kold issues a resale exemption certificate to his supplier for all of his purchases. Mr. Kold decides to take a refrigerator out of inventory for use in his home. Mr. Kold must remit state and local sales tax based on the cost of the refrigerator on his next return. Heavy City's city sales tax would apply as the refrigerator was purchased in Heavy City. Should Mr. Kold use the refrigerator for one (1) year in his home and subsequently return the used refrigerator to his stock of goods, sales tax would be due on the selling price of the refrigerator when resold to a subsequent purchaser. In this situation, White City's city sales tax would apply.

(C) Example. Mr. Lowd operates a radio store in Ham City, which has a city sales tax. Mr. Lowd purchases all of his radios from an out-of-state supplier and issues a resale exemption certificate for all of his purchases. If Mr. Lowd decides to remove a radio from inventory to use himself, city sales tax would not be due as the radio was purchased from out-of-state.

*Auth: section 94.530, RSMo (1986).
C.S.T. regulation 540-5A originally filed
Dec. 31, 1975, effective Jan. 10, 1976.*

12 CSR 10-5.070 City Tax Applies—Delivery from Outside the State

PURPOSE: This rule indicates that delivery from outside Missouri does not remove the seller's liability for city sales tax and interprets and applies section 94.540.5, RSMo (1986).

(1) When a Missouri seller makes a taxable sale to a Missouri purchaser and the property

is to be delivered from a point outside Missouri to a point either within or beyond the limits of a taxing city, the sale is subject to the city sales tax.

(A) Example. Mr. Strong is a customer of the Barbell Company, a Missouri seller located in Sun City, a local taxing jurisdiction. Mr. Strong orders merchandise from the Barbell Company for delivery at his place of business and home located outside the corporate city limits of Sun City. Barbell Company orders the merchandise for Mr. Strong from a manufacturing company located outside the state of Missouri. The manufacturing company ships the merchandise by common carrier directly to Mr. Strong's place of business. Barbell Company is subject to Sun City's city sales tax on the merchandise sold to Mr. Strong.

(B) Example. Ms. Stone, a Missouri purchaser, located in Sun City, has a mail-order catalog from Rock Company, a vendor located outside the state of Missouri, with no office, property or salesmen in Missouri. Ms. Stone sends an order in the mail to Rock Company for merchandise to be delivered to her place of business by common carrier. Ms. Stone is subject to the Missouri use tax if the merchandise is for storage, use or consumption. The sale is not subject to city sales tax.

(C) Example. Mr. Mudd, a Missouri purchaser, lives outside the corporate city limits of Sun City. He places an order with Mr. Kleen, a salesman for the Dazzle Company, a vendor located outside of the state of Missouri. Mr. Kleen works from his office in his home in Sun City. The Dazzle Company does not have any other office or property in the state of Missouri. The Dazzle Company fills the order from its warehouse located outside the state of Missouri and ships the merchandise directly to Mr. Mudd's home. The Dazzle Company is subject to Sun City's city sales tax on the merchandise sold to Mr. Mudd.

(D) Example. Mr. LeBeau, a Missouri purchaser, located in Sun City, contacts Mr. Dudley, a salesman for the Kam Company, a vendor located outside Missouri without an office in the state of Missouri. Mr. Dudley calls on Mr. LeBeau at Mr. LeBeau's place of business. Mr. Dudley takes the order for merchandise and returns to his out-of-state location from which the merchandise is then shipped to Mr. LeBeau's place of business. The Kam Company is not subject to Sun City's sales tax on the merchandise sold to Mr. LeBeau because the Kam Company has no place of business within Sun City.

*Auth: section 94.530, RSMo (1986).
C.S.T. regulation 540-6 originally filed
Oct. 28, 1975, effective Nov. 7, 1975.
Refiled Dec. 31, 1975, effective Jan. 10,*

1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

Fabick and Co. v. Schaffner, 492 SW2d 737 (1973). Jurisdictional arguments based upon lack of reciprocal benefit under city tax law are unavailing because the retailer is within the city imposing the tax and is the recipient of governmental services provided by the city. The contention that only a rebuttable presumption was intended by the phrase "shall be deemed to be consummated at the place of business of the retailer" was rejected. The obvious purpose of the premium was to fix the taxable situs of transactions which might have a nexus with more than one municipality. City sales tax of Jefferson City, like the state sales tax, is a gross receipts tax, not a transactions tax.

See also, *Mobil-Teria Catering Co., Inc. v. Spradling*, 576 SW2d 282 (Mo. en banc 1978). For purposes of public mass transportation tax and transportation sales, "place of business" of mobil food service business referred to place where trucks were parked, wares displayed, initial orders taken and filled, payments made and sales consummated. Thus, the public mass transportation tax or transportation sales tax could not be imposed by municipal corporation on gross receipts from places of business outside the geographical limits of the city of municipality.

Due to similarity with rule, see also section 94.540.5, RSMo.

12 CSR 10-5.072 Metered and Non-metered Natural Gas Sales

PURPOSE: The purpose of this rule is to clarify the incidence of local tax on the sale of natural and propane gas.

(1) For purposes of local sales tax on metered pipeline sales of natural gas, the meter located at the residence of the purchaser shall constitute the place of business of the retailer. The local sales tax rate in effect at the location of the meter shall apply to the metered pipeline sale.

(2) Where bulk deliveries of propane or natural gas are made by the seller by service truck and where the fuel is dispensed into either a customer- or retailer-owned tank which does not have a metering device and the customer purchases and owns the contents, the sale

shall be deemed to be consummated at the seller's principal place of business. The local sales tax rate in effect at the seller's principal place of business shall apply to the sale.

(3) Where bulk deliveries of natural or propane gas are made by the seller by service truck to a storage tank which has a metering device used to measure the consumption of fuel used by the consumer for billing purposes, and where the seller maintains control of the fuel in the tank, the sale shall be deemed to be consummated where the tank is located. The local sales tax rate in effect at the location of the tank shall apply to the sale.

Auth: section 94.530, RSMo (1986). Original rule filed Oct. 15, 1985, effective Jan. 26, 1986.

12 CSR 10-5.075 Application of City Sales Tax to Rental or Leasing Receipts

PURPOSE: This rule indicates that city sales tax applies to rental or leasing receipts where tax was not paid at the time of purchase and interprets and applies section 94.540.5, RSMo (1986).

(1) Persons renting and leasing tangible personal property on which Missouri state sales tax was not paid at the time of purchase are subject to the city sales tax on rental and leasing receipts if the rented or leased properties are used or installed within a city imposing a city sales tax for a period of over thirty (30) calendar days, regardless as to where the renter or lessor is located. Persons renting and leasing items for periods of thirty (30) calendar days or less are subject to the city sales tax on the lease or rental receipts imposed by the city in which the renter or lessor is located when it cannot readily be determined where items will be used.

(2) If, at a later date, the renter or lessee decides to purchase the property which s/he previously had been renting or leasing, the seller, renting or leasing, is subject to the city sales tax based on the seller's location since the sale is consummated at his/her location. If the seller has more than one (1) location, the taxable situs will be the location where the initial order was taken. No deduction or allowance of any kind is to be allowed for any city sales tax previously paid on rent or lease receipts.

(3) When a customer within a taxing city in Missouri rents or leases tangible personal property from an out-of-state seller, the seller is subject to the appropriate city sales tax

imposed by the city in which the renter or lessee will use or install such property. These transactions are not sales at retail but constitute taxable services.

Auth: section 94.530, RSMo (1986). C.S.T. regulation 540-7 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

12 CSR 10-5.080 Refund Procedures

PURPOSE: This rule indicates the requirements of a claim for overpayment and whether a refund or credit is appropriate and interprets and applies section 94.550.2, RSMo (1986).

(1) Where a taxpayer claims an overpayment as a result of clerical error or mistake, s/he must file a written claim in such manner as prescribed by the director of revenue within two (2) years of the overpayment. No claim will be considered unless filed within that time.

(2) Before any claim for refund is approved, it must be shown, where applicable, that the seller has returned to the purchaser the amount claimed if the purchaser was charged this amount.

(3) In cases where a claim for credit is approved, the director of revenue will issue a credit memorandum in the amount of the overpayment. The credit may then be applied by the taxpayer to any existing tax liability or to his subsequent tax liability. Note: In no case should the taxpayer take credit for any overpayment unless prior approval has been obtained from the director of revenue.

(4) Where there is no subsequent liability, as where a person has paid a tax and it is later discovered that there was no liability and the person is no longer in business, the person should make a claim for refund as provided previously. The refund, if allowed, will be paid out of funds deposited in the city trust fund.

(5) See 12 CSR 10-3.516—12 CSR 10-3.528.

Auth: section 94.530, RSMo (1986). C.S.T. regulation 550-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.