
Rules of Department of Revenue

Division 10—Director of Revenue

Chapter 4—State Use Tax

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Title 12—DEPARTMENT OF REVENUE

Division 10—Director of Revenue Chapter 4—State Use Tax

12 CSR 10-4.005 Purchaser Includes

PURPOSE: This rule aids in determining who is a purchaser and interprets and applies sections 144.605(5) and 144.610, RSMo.

(1) A person who is a purchaser of tangible personal property for use, storage or consumption includes not only persons who acquire title to or ownership of the property but also persons who acquire the right to use, consume or store the property to which title, ownership or right was acquired through a sale. Therefore, a bailee, lessee or borrower or person having the right to use, store or consume is subject to the use tax.

*AUTHORITY: section 144.705, RSMo 1994. * U.T. regulation 605-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.010 Purchaser's Responsibilities

PURPOSE: This rule is intended to aid in defining a purchaser's responsibilities for state use taxes and interprets and applies sections 144.610 and 144.620, RSMo.

(1) When a person has delivered an exemption certificate to an out-of-state vendor 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 use tax on the value of the tangible personal property at the time it is converted to use.

(2) When a person purchases tangible personal property outside Missouri upon which the Missouri use tax has not been imposed, that person is subject to the use tax on the purchase price of the tangible personal property, unless the tangible personal property is purchased for resale.

(A) Example: A veterinarian, Dr. Horse, located in Jefferson City, Missouri, purchases chemicals and supplies from two (2) companies, "C" and "D". Companies "C" and "D" are both located in Chicago, Illinois and do all their business strictly by mail order. During calendar year 1973, Dr. Horse pur-

chased one thousand dollars (\$1000) worth of merchandise from each company. Company "C" is registered with the Missouri Department of Revenue for the payment of use tax and should collect and remit the use tax on Dr. Horse's purchases. Company "D" does not file a return with Missouri and Dr. Horse must file a return showing the amount of purchase from Company "D" and pay the use tax on those purchases.

*AUTHORITY: section 144.705, RSMo 1994. * U.T. regulation 605-2 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Nov. 8, 1988, effective Jan. 27, 1989.*

**Original authority: 144.705, RSMo 1959.*

Southwestern Bell Telephone Co. v. Morris, 345 SW2d 62 (1961). A compensating use tax such as the one now under scrutiny has been aptly characterized as a levy on the privilege of using, within the taxing state, property purchased outside the state, if the property would have been subject to the sales tax had it been purchased at home. It seems to be universally considered that the use tax and sales tax laws are complimentary and supplementary to each other.

Pryor Executive Planes, Inc. v. Director of Revenue, Case No. RS-82-0463, (A.H.C. 8/6/87). The Administrative Hearing Commission examined the case under 144.615(6), RSMo which limits the resale exemption to goods held by 1) retailers, 2) solely for resale, and 3) in the regular course of business. As a retailer whose regular business was the sale of aircraft, petitioner met two prongs of the test. Petitioner failed to meet the second requirement because petitioner chartered the aircraft, rented the aircraft to its shareholders and depreciated the aircraft for income tax purposes. The commission stated these uses were inconsistent with petitioner's holding of aircraft solely for resale, and instead constituted use or consumption sufficient to subject the acquisition of the aircraft to use tax.

12 CSR 10-4.015 Sale Consummation

PURPOSE: This rule aids in determining when a sale takes place and interprets and applies section 144.605(5), RSMo.

(1) A sale takes place at the time the tangible personal property is delivered to the Missouri purchaser for the purpose of consuming, storing or using, when the property has finally come to rest in this state or when commin-

gled with general mass of properties of this state. The place of sale is the place of delivery of the property to the purchaser, user, storer or consumer, whether the delivery be made by the vendor, the United States mail or common carrier.

(2) In addition to the delivery requirement, a sale is considered consummated when the ownership of or title to tangible personal property is transferred from the vendor to the purchaser or buyer. In transactions where the purchaser acquires possession of property but the title is retained by the vendor, the sale takes place when the possession of the goods transfers to the purchaser.

*AUTHORITY: section 144.705, RSMo 1994. * U.T. regulation 605-3 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

Director of Revenue v. Superior Aircraft Leasing Co., Inc., No. 68857 (Mo. banc 7/14/87). The Missouri Supreme Court overruled the line of cases applying the old taxable moment doctrine in L & L Marine Service and Management Services and adopted the four-part test of Complete Auto Transit, 430 U.S. 274, 97 S. Ct. 1076 (1977).

The state's right to tax interstate commerce is limited, however, and no state tax may be sustained unless the tax: 1) has a substantial nexus with the state; 2) is fairly apportioned; 3) does not discriminate against interstate commerce; and 4) is fairly related to the services provided by the state.

Here, even though the plane was hangared and repairs, if needed, were made in Dayton, Ohio, there were contacts with Missouri sufficient to create a substantial nexus. The taxpayer could use Missouri courts to enforce resolutions arising from its board meetings. The court concluded also that the use tax imposed was also fairly apportioned. Missouri statutes allow credits for taxes paid to another state; however, Superior Aircraft had not paid sales or use tax to any other state and even if it had done so Missouri has a system of tax credit for taxes paid in other states.

Finally, the court concluded that there was no discrimination since interstate and intrastate commerce are equally burdened.

12 CSR 10-4.020 Delivery

PURPOSE: This rule indicates the effect delivery has on when and where a sale occurs

and interprets and applies sections 144.605(5) and 144.615(5), RSMo.

(1) If a purchaser takes possession of property in another state him/herself, Missouri use tax would not apply provided similar taxes were imposed on the sale by another state equal to or in excess of the taxable rate imposed under the Missouri Use Tax Act. For the purposes of this Act, the date and place of the sale is determined by the delivery of the property into the purchaser's possession.

(2) All types of sales, bailments, loans, conditional sales, installment and credit sales will make the purchaser subject to the use tax where there is an acquisition of title to, or ownership of, tangible personal property or a right gained by consideration paid or to be paid to use, consume or store the property.

(3) The provisions as to the time and place of conditional sales are the same as those applicable to other types of sales, except bailments. The vendor, where conditional sales transactions are involved, must report and pay the full amount of the use tax as determined by the full amount of the sales price of the property sold under the conditional sale transaction.

(4) Example: The Tiny Construction Company located in St. Louis, Missouri purchases a basic earthmover tractor for one hundred ninety thousand dollars (\$190,000) in East St. Louis, Illinois from the Big Tractor Company. Big Tractor Company delivers the tractor to St. Louis, Missouri. Big Tractor Company is to be registered with the Missouri Department of Revenue and is to collect and remit Missouri use tax in the amount of five thousand seven hundred dollars (\$5700).

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 605-4 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

Director of Revenue v. Superior Aircraft Leasing Co., Inc., No. 68857 (Mo. banc 7/14/87). The Missouri Supreme Court overruled the line of cases applying the old taxable moment doctrine in *L & L Marine Service and Management Services* and adopted the four-part test of *Complete Auto Transit*, 430 U.S. 274, 97 S. Ct. 1076 (1977).

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Finally, the court concluded that there was no discrimination since interstate and intrastate commerce are equally burdened.

Therefore, under the test prescribed in *Complete Auto Transit*, the court held that the imposition of Missouri use tax was permissible under the Commerce Clause of the United States Constitution.

12 CSR 10-4.025 Guideline for When Title Passes

(Rescinded January 12, 1987)

AUTHORITY: section 144.705, RSMo 1969, U.T. Regulation 605-5 filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Sept. 23, 1986, effective Jan. 12, 1987.

12 CSR 10-4.030 Delivery Charges

(Rescinded May 9, 1994)

AUTHORITY: section 144.705, RSMo 1986. U.T. regulation 605-6 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Amended: Filed Sept. 23, 1986, effective Jan. 12, 1987. Amended: Filed Sept. 11, 1990, effective Feb. 14, 1991. Rescinded: Filed Oct. 1, 1993, effective May 9, 1994.

12 CSR 10-4.035 Consideration Other Than Money

PURPOSE: This rule interprets and applies section 144.605(5), RSMo. State use taxes apply to the fair market value of property exchanged.

(1) The term sale is defined to include the exchange of properties whether in moneys or any other valuable consideration. Use tax is levied on the consideration paid or charged for the exchange of tangible personal property

or taxable services, including the fair market value of the property at the time and place of the exchange. Consequently, a sale may exist whether moneys have been exchanged or not, as long as there is a valuable consideration.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 605-7 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

Weather Guard, Inc. v. Director of Revenue, 746 SW2d 657 (Mo. App. 1988). The court cited *King v. National Super Markets, Inc.*, 653 SW2d 220 (Mo. banc 1983), which held that when the cost of paper sacks was factored into the price for which goods were sold, that constituted a resale under section 144.615(6), RSMo. The court opined that because the customers paid sales tax on the increased cost of insulation, there was no loss of revenue, and to impose a use tax on the insulation blowing machines to the wholesaler of the insulation would amount to double taxation.

12 CSR 10-4.040 Delivery Expenses to Purchaser

(Rescinded April 9, 1994)

AUTHORITY: section 144.705, RSMo 1986. U.T. regulation 605-8 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Oct. 1, 1993, effective April 9, 1994.

12 CSR 10-4.045 Cancelled Sales

PURPOSE: This rule indicates what a taxpayer may do when a sale is subsequently cancelled and interprets and applies sections 136.035 and 144.130, RSMo.

(1) Where a contract for sale has been cancelled within ninety (90) days of the date of delivery to the purchaser, a vendor of tangible personal property or services may exclude those receipts or charges from his/her return if the sale has not been reported.

(2) Where the use tax has been reported and paid, an application for refund/credit for the tax paid upon such receipt or charge shall be filed within two (2) years from the date the tax was paid.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 605-9 originally filed Oct.

28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.050 Cost of Doing Business

PURPOSE: This rule interprets and applies section 144.605(6), RSMo. Deductions are not allowed for costs of doing business.

(1) The factor for determining whether labor charges are taxable is, if they become a part of or are incorporated into the agreed purchase or selling price of the property. No deductions are allowed the vendor for labor which is part of the production cost of any property which is to be sold at retail. The costs of doing business, such as raw materials consumed and labor to assemble, under no circumstances are deductible.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 605-10 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

*Original authority: 144.705, RSMo 1959.

Management Services, Inc. v. Spradling, 547 SW2d 466 (Mo. banc 1977). Changes for out-of-state laboratory services were not incidental to film production and were therefore not subject to use tax.

12 CSR 10-4.055 Regulations Under Section 144.020, RSMo

PURPOSE: This rule indicates where Missouri state sales tax regulations apply and interprets and applies section 144.610(1), RSMo.

(1) All rules under subdivisions (1) and (3) of section 144.020, RSMo also apply to subdivision (8) of section 144.605, RSMo.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 605-11 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

*Original authority: 144.705, RSMo 1959.

King v. L & L Marine Service, Inc., 647 SW2d 524 (Mo. banc 1983). Use tax is a levy on the privilege of using within the taxing state, property purchased outside the state, if the property would have been taxable if purchased at home.

12 CSR 10-4.060 Vendor Includes

PURPOSE: This rule indicates what the definition of vendor also includes and interprets and applies section 144.605(11), RSMo.

(1) A vendor also includes bailors, lenders and other persons who sell for a consideration the right to use, store or consume tangible personal property through a sale.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 605-12 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.070 Use Tax License Necessary

(Rescinded March 30, 2001)

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 610-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-4.075 Sales to Contractors

(Rescinded March 30, 2001)

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 610-2 filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed Sept. 27, 2000, effective March 20, 2001.

12 CSR 10-4.080 Sales to National Banks and Other Financial Institutions

PURPOSE: This rule indicates the liability of sellers of tangible personal property to national banks and other financial institutions for Missouri state use tax and interprets and applies section 144.615(1), RSMo.

(1) Persons selling tangible personal property or taxable services to national banks, other banks, credit unions or credit institutions, and savings and loan associations, whether state or otherwise, are subject to and liable for the use tax. Federal Reserve Banks and federal Land Banks are not subject to the use tax.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 615-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.085 Liability of Out-of-State Vendors

PURPOSE: This rule indicates the duties and responsibilities of out-of-state vendors for Missouri state use taxes and interprets and applies sections 144.620 and 144.635, RSMo.

(1) Out-of-state vendors who have sufficient contact with Missouri must register with the Department of Revenue and submit returns. The extent of the contact with the state and the nature of business of the vendor will determine what tax the vendor is subject to.

(2) The Department of Revenue has established criteria to be used, but not exclusively, in determining if an out-of-state vendor is subject to the sales tax. If the out-of-state vendor is not subject to the sales tax, s/he is subject to the use tax. A vendor is required to pay or collect and remit the tax imposed if, within this state, s/he directly or by any agent or other representatives—

(A) Has or utilized an office, distribution house, sales house, warehouse, service enterprise or other place of business;

(B) Maintains a stock of goods;

(C) Regularly solicits orders whether or not the orders are accepted in this state, unless the activity in this state consists solely of advertising or of solicitation by direct mail;

(D) Regularly engages in the delivery of property in this state other than by common carrier or United States mail; or

(E) Regularly engages in any activity in connection with the leasing or servicing of property located within this state.

(3) Out-of-state vendors who solicit sales in Missouri by television broadcast or other advertising media are subject to Missouri use tax on sales of goods delivered to the purchaser in Missouri, if one (1) of the following conditions is met:

(A) The out-of-state vendor has an office, distribution house, sales house, warehouse, service enterprise or other place of business in Missouri; or

(B) The out-of-state vendor makes the sales through the local television station(s), cable companies or other advertising media agents(s) for the out-of-state vendor. This section shall not include any sales which Missouri is prohibited from taxing under the constitution or laws of the United States of America.

(4) This state does not seek to impose use tax collection requirements on any retailer over

whom the previously mentioned standard does not confer jurisdiction in this state.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 615-2 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed May 16, 1989, effective Sept. 11, 1989.

*Original authority: 144.705, RSMo 1959.

Primary Steel, Inc. v. Director of Revenue, Case No. RS-82-0059 (A.H.C. 9/7/83). The issue in this case was whether there was sufficient nexus between the state of Missouri and the taxpayer to justify imposing upon the taxpayer the duty of collecting vendor use tax for sales made to Missouri customers. The court looked to the decision in **Miller Bros. Co. v. Maryland**, 347 U.S. 340 (1954) which seemed to establish a standard of a continuous local solicitation versus no solicitation other than the incidental acts of general advertising. The commission found that there must be continuous, or at least regular local solicitation, and that the occasional trips made to the state of Missouri by taxpayer's salesmen did not constitute regular solicitation. For that reason it was found that there was no nexus in the state of Missouri.

12 CSR 10-4.090 Regulations Under Subdivisions (2) and (3) of Sections 144.030 and 144.040, RSMo

PURPOSE: This rule prescribes where Missouri state sales tax regulations apply and interprets section 144.615(3), RSMo.

(1) All rules under subdivisions (2) and (3) of sections 144.030 and 144.040, RSMo apply to subdivision (3) of section 144.615, RSMo.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 615-3 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.095 Motor Vehicle Purchased

PURPOSE: This rule prescribes that a motor vehicle purchase is not subject to the Missouri compensating use tax law and interprets and applies section 144.615(1), RSMo.

(1) A motor vehicle purchased out of the state of Missouri and brought into Missouri is subject to Missouri's motor vehicle use tax laws

and not the compensating use tax law as imposed under sections 144.600-144.745, RSMo. Any questions regarding this should be directed to the Motor Vehicle Bureau, P.O. Box 100, Jefferson City, MO 65102.

AUTHORITY: section 144.705 RSMo 1994.* U.T. regulation 615-4 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.100 Tax Paid to Another State

PURPOSE: This rule indicates the liability of a person who makes a taxable purchase and takes delivery in another state and interprets and applies section 144.615(1), RSMo.

(1) A person who makes a taxable purchase and takes delivery in any state other than Missouri where a sales or use tax is imposed and paid to that state in an amount equal to or greater than the four percent (4%) Missouri use tax is not subject to the Missouri use tax. If, however, the rate of tax paid is less than the four percent (4%) Missouri use tax law, the purchaser is subject to use tax on the difference. If no tax was paid to another state, the purchaser is subject to the use tax on the full amount. Only the person who has paid the prior sales or use tax on the item can claim the credit. Adequate proof that the tax had been paid, in the form of receipts or invoices, must be maintained by the purchaser.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 615-5 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Oct. 15, 1984, effective Feb. 11, 1985.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.105 Resale

PURPOSE: This rule indicates when tangible personal property is not subject to Missouri use tax and interprets and applies section 144.615(6), RSMo.

(1) Tangible personal property held solely for resale in the regular course of business to other persons is not subject to the use tax. The test is what is to be done with the property purchased and held by the purchaser. Terminology is not determinative. The purchaser and holder of the property can be

called a wholesaler, but wholesalers are also, at times, consumers themselves.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 615-6 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

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(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.

Paper bags transferred to customers by retail grocer were purchased by grocer for resale (see **King v. National Super Markets, Inc.**, 653 SW2d 220 (Mo. banc 1983)). Wooden shipping pallets were not purchased for resale by shipper (see **Floyd Charcoal Co., Inc. v. Director of Revenue**, 599 SW2d 173 (Mo. banc 1980)); fact that soft drink bottles could be returned for deposit did not make jobbers liable for use tax on theory that they had purchased at retail (see **Smith Beverage Co. of Columbia, Inc. v. Reiss**, 568 SW2d 61 (Mo. En banc 1978)).

Pryor Executive Planes, Inc. v. Director of Revenue, Case No. RS-82-0463 (A.H.C. 8/6/87). The Administrative Hearing Commission examined the case under 144.615(6), RSMo which limits the resale exemption to goods held by 1) retailers, 2) solely for resale, 3) in the regular course of business. As a retailer whose regular business was the sale of aircraft, petitioner met two prongs of the test. Petitioner failed to meet the second requirement because petitioner chartered the aircraft, rented the aircraft to its shareholders and depreciated the aircraft for income tax purposes. The commission stated these uses were inconsistent with petitioner's holding of aircraft solely for resale, and instead constituted use or consumption sufficient to subject the acquisition of the aircraft to use tax.

12 CSR 10-4.110 Personal Effects

PURPOSE: This rule indicates when personal effects which are brought into Missouri are

not subject to the Missouri use tax and interprets and applies section 144.615(7), RSMo.

(1) Property, brought into Missouri by a bona fide resident of another state for use, storage or consumption, which is classified as personal effects, is not subject to the use tax. Examples of personal and household effects include, but are not limited to, personal clothing and jewelry, appliances and furniture. Examples of farm machinery which may be classified as personal effects include, but are not limited to, tractors, combines and balers.

(2) The property when purchased must have been intended for use, storage or consumption outside Missouri. Initial use of the property must be outside this state. If the property is brought into this state for use, storage or consumption by a nonresident of Missouri who intends to remain in this state on a temporary basis, it is not subject to the Missouri use tax.

(3) Example: Bob, an out-of-state resident, becomes a resident of Missouri and moves his household goods and furniture into this state. Bob is not subject to the Missouri use tax regardless of whether or not sales or use tax was paid at the time he purchased his household goods.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 615-7 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.115 Documentation Required

PURPOSE: This rule indicates that documentation is necessary for deductions and interprets and applies section 144.640, RSMo.

(1) Transactions which are deductible under the compensating use tax law under section 144.615, RSMo, can be deducted only if the transaction is documented so as to be capable of verification on audit.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 615-8 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.120 Presumption

PURPOSE: This rule interprets and applies section 144.620, RSMo and there is a presumption that items sold by out-of-state vendors which are brought into Missouri are for storage, use or consumption.

(1) When any out-of-state vendors sell tangible personal property for delivery to this state, the property is presumed brought into Missouri for the purpose of storage, use or consumption and the receipts from all such sales are subject to the use tax. When out-of-state vendors sell tangible personal property for delivery to this state which will be stored and which will later be resold, the vendors are not subject to the use tax on the receipts from such sales when the purchaser furnishes a resale exemption certificate.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 620-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.125 Gross Sales Reporting Method

(Rescinded March 14, 1991)

AUTHORITY: section 144.705, RSMo 1986. U.T. regulation 635-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Oct. 24, 1990, effective March 14, 1991.

12 CSR 10-4.127 Vendors Use Tax vs. Consumers Use Tax

PURPOSE: This rule interprets the state use tax law as it applies to vendors use tax vs. consumers use tax and interprets and applies sections 144.620 and 144.635, RSMo.

(1) A seller located outside Missouri selling tangible personal property to Missouri customers where the property is shipped or delivered to the customer who stores, uses or consumes the property in Missouri is required to collect and remit to the state of Missouri vendors use tax on all sales if the seller has sufficient nexus with Missouri (see 12 CSR 10-4.085).

(2) A Missouri customer who purchases tangible personal property from an out-of-state vendor and who uses, consumes or stores the property in Missouri is required to report and

remit consumer use tax. A Missouri customer will not be required to report and remit consumers use tax until his/her untaxed purchases exceed two thousand dollars (\$2,000) in a calendar year. Once the Missouri customer's untaxed purchases exceed two (\$2,000) in a calendar year, the customer must report and remit consumers use tax on all untaxed purchases for the entire calendar year. The Missouri customer is relieved from liability if s/he receives a receipt showing the tax was paid from the out-of-state vendor authorized by the director of revenue to collect the tax.

(A) Example: Mr. Brown, a Missouri contractor, purchases a truck load of materials for two thousand five hundred dollars (\$2,500) from a supplier in Kansas. The Kansas supplier does not charge or collect sales tax from Mr. Brown. Mr. Brown is required to report and remit consumers use tax to the Department of Revenue on his purchase price of two thousand five hundred dollars (\$2,500) for the materials.

(B) Example: Mr. Green, a Missouri resident, purchases a necklace for one thousand five hundred dollars (\$1,500) from a vendor located in Oklahoma. Mr. Green does not purchase anything else during the calendar year from a vendor located outside the state of Missouri. The Oklahoma vendor does not charge or collect sales tax from Mr. Green. Mr. Green is not required to report and remit consumer use tax to the Department of Revenue on his purchases for the calendar year because they did not exceed two thousand dollars (\$2,000).

AUTHORITY: section 144.705, RSMo 1994.* Original rule 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.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.130 Separately Stating

PURPOSE: This rule indicates the requirements that a vendor collect the tax and separately state the tax.

(1) The vendor is required to collect the tax on the selling price of the commodity sold or services rendered. The vendor is also required, when billing customers, to set out separately on the billing the appropriate amount of tax collected on the purchase.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 635-2 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.135 Vendor to File Collection Suit

PURPOSE: This rule provides that the vendor is responsible for filing any suit to collect use taxes from a purchaser and interprets and applies section 144.635, RSMo.

(1) When a purchaser refuses to pay the use tax, the vendor shall be responsible for filing any suit to collect the amount due.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 635-3 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.140 Exemption Certificates

PURPOSE: This rule indicates the record-keeping and other requirements necessary for a vendor in order to substantiate deductions and interprets and applies sections 144.620 and 144.640, RSMo.

(1) All vendors making sales of tangible personal property or services subject to the Missouri use tax are liable for determining whether the purchase is for storage, use or consumption or for resale. All vendors are required to keep adequate records of sales and transactions, where the use tax is applicable to support reports filed with the director of revenue. The director will not recognize any deductions on a vendor's tax return unless the vendor has adequate supporting evidence in his/her records to verify the deductions. Vendors must also keep in their records signed resale exemption certificates supporting deductions taken as sales for resale. Those certificates are to be kept in the taxpayer's files and must be made available for inspection by the director of revenue or his/her agents, during all business hours of the day. Those resale exemption certificates shall be only *prima facie* evidence that the property or services described were sold for the purpose of resale and the director has the right to examine all facts relative to the purchase and sale before the resale exemption certificates will be honored.

(2) The resale exemption certificate should state that all of the purchases made by the

purchaser for a certain definite period or for a certain transaction will be purchased from the seller for resale and that the purchaser assumes liability for the tax from the ultimate user or consumer. A complete detailed record of such purchases must be kept by the taxpayer. Where the goods purchased are for use or consumption, and not for resale by the purchaser, the vendor shall also be held responsible for the use tax on the goods.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 640-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

Op. Atty. Gen. No. 149, Murray (10-6-76). *The director of revenue does not have the right or duty to grant a use tax exemption in the case in which an individual transfers motor vehicles to a corporation in which s/he owns 100% of the stock and the corporation assumes the outstanding liability on said motor vehicle.*

12 CSR 10-4.145 Audit, No Credit
(Rescinded November 30, 2000)

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 640-2 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-4.150 Limitation on Assessment

PURPOSE: This rule clarifies the statute of limitations on assessments and interprets and applies section 144.670, RSMo.

(1) The limitation on assessment for a taxpayer who is registered and files a return with or without payment is three (3) years from the date the return was filed. There is no limitation on assessment for the taxpayer who fails to file a return.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 645-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Dec. 3, 1985, effective Feb. 24, 1986.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.155 Vendor's Responsibility

PURPOSE: This rule aids in determining the responsibilities of a vendor regarding Mis-

souri use tax and interprets and applies sections 144.615(6) and 144.635, RSMo.

(1) The burden of proving a sale of tangible personal property was made for resale and not at retail shall be upon the vendor. The vendor is required to secure and retain a signed exemption certificate from the purchaser as evidence that the sale is made for resale and, therefore, exempted from the use tax.

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

(3) The vendor 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 use tax upon the sale. Exemption certificates must be available at the establishment of the vendor for ready inspection and comparison with the deductions claimed.

(4) Exemption certificates may not be used to obtain tangible personal property or taxable services to be used by the purchaser and not for resale. It is a crime to misuse the use tax identification number and exemption certificate for the purpose of obtaining tangible personal property or taxable services without the payment of the sales or use tax when it is due.

(5) If a vendor sells tangible personal property or taxable services free of the use tax on an exemption certificate when s/he knows or should know in the use of ordinary care, that the property or service which s/he is selling is not for resale by the purchaser, but is for the purchaser's own use or consumption in business or otherwise, the vendor shall be liable for the use tax.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 650-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.160 Effect of Saturday, Sunday or Holiday on Payment Due

PURPOSE: This rule establishes the due date for payment of taxes where the original due

date falls on certain days and interprets and applies section 144.655, RSMo.

(1) If the last day for payment of the taxes falls on a Saturday, Sunday or legal holiday, the payment shall be considered timely if it is postmarked or filed in person the next succeeding day, which is not a Saturday, Sunday or legal Missouri or national holiday.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 655-1 filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.165 Bad Debts Credit

PURPOSE: This rule establishes when a taxpayer is entitled to request a credit for charged-off items and interprets and applies section 144.660, RSMo.

(1) A person filing on the basis of gross sales is entitled to request a credit of charged-off items upon which the tax has already been paid to the director of revenue. Charge-off items are not allowable deductions when returns are made on a gross receipts basis.

(2) The two (2) tests as to whether or not that request will be granted are, first, whether or not the tax has been remitted on the items and, second, whether or not the charge-off credit would be deductible in making state or federal income tax returns. The application for credit on charged-off items should be made immediately after discovery that the debt must be charged-off if within the two (2)-year statute of limitations as prescribed by section 136.035, RSMo.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 655-2 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.170 Aggregate Amount Defined

PURPOSE: This rule defines the term aggregate amount for Missouri use tax purposes and interprets and applies section 144.660, RSMo.

(1) For the purpose of the compensating use tax law, aggregate amount is defined as only

the amount of state compensating use tax due.

(2) When a vendor is unable to file a return by the due date, the vendor may estimate the amount of tax due for the first two (2) months of a quarter based on the best information available such as the same month the previous year with a modifier for business or economic conditions.

(3) A return must be filed and completed in its entirety even if a taxpayer is filing an estimated return (see section 144.660, RSMo and 12 CSR 10-3.458).

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 655-3 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.175 Amended Returns

PURPOSE: This rule prescribes the requirements for an amended return of any vendor.

(1) If any vendor subject to the Missouri use tax determines s/he has not filed a correct return for any given period, s/he is required to immediately file an amended return identifying additions, supplements, deletions or any other corrections or alterations. The director, upon review, may demand an amended return if it is determined that the vendor has erroneously filed the original return.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 655-4 filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.180 Filing Final Return

PURPOSE: This rule establishes the due date for a final return and sets forth the assumed liability of a purchaser of a business.

(1) Any vendor terminating or selling his/her business, stock, furnishings or fixtures is required to file, within fifteen (15) days after terminating, a final return to be furnished by the director upon specific request. The return should be forwarded to the director of revenue with an accompanying remittance for taxes, interest and penalty if applicable, to the date of termination.

(2) Should an obligation exist, the purchaser shall withhold a sufficient amount from the purchase price of the business to defray any liability until the former owner provides the director of revenue with satisfactory evidence that the liability has been satisfied and no further liability exists or until the former owner obtains a certificate of no tax due from the director of revenue. If the person acquiring the business fails to accomplish the previously mentioned, s/he shall become liable for any taxes, interest or penalty charges made against the former owner.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 655-5 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.185 Filing Returns When No Liability Exists

PURPOSE: This rule prescribes that a return shall be filed even though no liability exists.

(1) Every business, making sales of tangible personal property or rendering a taxable service, is required to file a combined sales/use tax return even though no (zero) (0) sales were made during the period covered by the return.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 655-6 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.190 Payment of Tax

PURPOSE: This rule prescribes the place for paying the tax, the provisions regarding returned checks and cash payments, and interprets and applies sections 144.655 and 144.660, RSMo.

(1) Vendors are to make remittance at the time the return is filed with the director of revenue. Checks, drafts or money orders should be made payable to and forwarded to the Sales Tax Bureau, P.O. Box 840, Jefferson City, MO 65105.

(2) Checks returned from the bank for any reason will be charged against the vendor's account, at which time, notification of the change will be given to the vendor. Upon receipt of a returned check, the vendor relinquishes his/her claim for a two percent (2%)

discount for a timely payment and subjects him/herself to the provisions regarding delinquency.

(3) In the event payment is made by cash, a receipt should be obtained identifying the name and address of the taxpayer, code number and the period for which the payment is intended. The receipt should be retained by the vendor as proof of payment.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 655-7 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Dec. 3, 1985, effective Feb. 24, 1986.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.200 Filing of Returns and Payment of Tax

PURPOSE: This rule provides that upon proper application the time for filing a return and paying the tax may be extended, and interprets and applies section 144.660, RSMo.

(1) The time for filing the tax may be extended for good cause for up to sixty (60) days upon proper application to the department prior to the due date. The postmark date is *prima facie* evidence of timely request.

(2) An approved extension does allow a person to take the two percent (2%) timely payment discount and does stop the interest charges for the time of the extension.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 660-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Dec. 3, 1985, effective March 24, 1986.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.205 Jeopardy Assessment

PURPOSE: This rule clarifies the director of revenue's authority to issue jeopardy assessments and interprets and applies sections 144.290 and 144.690, RSMo.

(1) Any time the director may have reason to believe a taxpayer is about to discontinue business or dispose of assets or for any other reason the director feels may jeopardize the payment of use tax due the state, s/he may ascertain the amount of tax to be paid and demand the tax payment which becomes due

and payable immediately upon notice to the taxpayer. If the taxpayer provides the director with reasonable security as may be required by the director, s/he may request a hearing and, if approved, the director will specify the time and place of the hearing. The director may continue the previously mentioned procedures from time-to-time if deemed necessary.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 660-2 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.210 Assignments and Bankruptcies

PURPOSE: This rule prescribes the preferential treatment required for outstanding taxes and the liability of trustees, assignees, receivers, and the title and interprets and applies section 144.610, RSMo in conjunction with Chapter 11 U.S.C.A., Bankruptcy Codes.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) All outstanding use tax, interest and penalties due the state from a bankrupt debtor making an assignment for creditors are to be given preference and the liabilities satisfied to the state before all general creditors.

(2) The trustee in bankruptcy or the assignee, in the case where an assignment has been made for and in behalf of creditors, should immediately remit any outstanding taxes, interest charges or penalties to the director before a general distribution of funds is made and will be held liable for the taxes if they are not paid prior to the distribution. When the courts appoint any person, whether trustee, assignee, receiver, to take over any business and operate or liquidate it, those persons are required to collect and remit the use tax and will be held personally liable. Every person should immediately notify the director when appointed by the court to take over said business or to liquidate the business.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 660-3 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.215 Estimated Assessment

PURPOSE: This rule relates to interest imposed on late payment of taxes and interprets and applies section 144.665, RSMo.

(1) All taxes not paid to the director of revenue on the date these taxes become due and payable shall bear interest at the rate of one percent (1%) per calendar month or fraction, a calendar month from and after the date due until paid, if paid prior to January 1, 1983. All taxes remaining unpaid as of January 1, 1983 and all taxes not paid to the director of revenue which become due and payable after January 1, 1983 shall bear interest at the same rate as established by the director of revenue in 12 CSR 10-41.010 Annual Adjusted Rate of Interest, published under the authority of section 32.065, RSMo.

AUTHORITY: section 144.705, RSMo 1994. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 2, 1983, effective Jan. 1, 1984. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.220 Calendar Month Defined

PURPOSE: This rule clarifies the definition of calendar month and interprets and applies section 144.655, RSMo.

(1) Calendar month, for the purposes of sections 144.600-144.745, RSMo, means the time from any day of any month as adjudged in the calendar to a corresponding day of the next month. Since a taxpayer is required to make returns and remittances on varying days, the month is to be an approximate thirty (30)-day interval.

(A) Example: "C", a retail business, is required by section 144.655, RSMo to file a monthly return for the period ending January thirty-first. The return and payment are due on the twentieth day of February, the succeeding month.

(B) Example: "C" is also required by section 144.655, RSMo to file a monthly return for the period of December which is due on

the thirty-first day of January, the succeeding month.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 655-2 originally filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Dec. 3, 1985, effective April 25, 1986.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.225 Fifteen Days Defined—Personal Service

(Rescinded January 12, 1985)

AUTHORITY: section 144.705, RSMo 1978. U.T. regulation 680-2 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Sept. 7, 1984, effective Jan. 12, 1985.

12 CSR 10-4.230 Protest Payment

PURPOSE: This rule clarifies the procedure and requirements where a taxpayer desires to protest the payment of tax assessed against the taxpayer and interprets and applies section 144.700, RSMo.

(1) Overpayments resulting from clerical, mathematical or similar errors should be recovered by following the refund procedures outlined in section 144.695, RSMo. If any taxpayer, in good faith and for just cause, feels the imposition of Missouri use tax has been improperly charged against him/her, s/he, when making his/her payment, may denote the payment as a protest payment and execute a protest payment affidavit specifically stating the grounds upon which the protest is being made. The claim must be made under oath within thirty (30) days after payment. If this procedure is not followed, all payments will be accepted by the director as proper payments. Protest payment claims are available through the director upon request (see section 144.700, RSMo and 12 CSR 10-4.280).

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 680-2 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.235 Acknowledgement of Informal Hearing

(Rescinded January 12, 1985)

AUTHORITY: section 144.705, RSMo 1978. U.T. regulation 680-3 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Sept. 7, 1984, effective Jan. 12, 1985.

12 CSR 10-4.240 Administrative and Judicial Review

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 and interprets and applies section 621.050, RSMo.

(1) A taxpayer affected by a final decision of the director of revenue may request a hearing by the Administrative Hearing Commission by filing a written complaint with the commission within sixty (60) of the date of the director of revenue's final decision (see section 621.050, RSMo).

(A) The sixty (60)-day period begins on the date when the director of revenue's final decision is mailed or delivered to the taxpayer, whichever is later.

(B) A complaint is considered to be filed at the time it is date stamped as received and filed by the Administrative Hearing Commission, unless sent by registered or certified mail. 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 144.705, RSMo 1994.* U.T. regulation 685-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed Jan. 3, 1996, effective July 30, 1996.

*Original authority: 144.705, RSMo 1959.

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) decision 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 10-4.245 Interest Payment

PURPOSE: This rule indicates when interest will or will not be credited or paid to the taxpayer and interprets and applies section 144.695, RSMo.

(1) Only in the case where the taxpayer is granted a judgment after judicial review is any interest to be credited or paid to the taxpayer for the overpayment of the Missouri use tax.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 685-2 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

International Business Machines v. State Tax Commission, 362 SW2d 635 (Mo. 1962). As to sales tax improperly collected, there is a provision for refund, but there is no provision that refunds bear interest.

12 CSR 10-4.250 Liens

PURPOSE: This rule indicates the procedure followed by the director of revenue in filing liens for use taxes and interprets and applies sections 144.380 and 144.690, RSMo.

(1) In any case in which any tax, interest or penalty imposed under the use 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 use tax, interest or penalty resides or has the 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 the county recorder a release executed by the director of revenue.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 690-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.255 Who Should Request Refund

(Rescinded October 30, 2000)

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 695-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled



March 30, 1976. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-4.260 Claim Form

(Rescinded October 30, 2000)

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 695-2 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-4.265 Refund Rather Than Credit

(Rescinded October 30, 2000)

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 695-3 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-4.270 Allowance for Defective Merchandise

PURPOSE: This rule indicates to what extent an allowance for defective merchandise will affect state use taxes and interprets and applies section 144.610, RSMo.

(1) Where an allowance is made for defective merchandise, the vendor is subject to the use tax upon the amount due after subtracting the allowances from the sales price. When the tax has been paid on the full selling price by the vendor, a credit or refund of the tax attributable to the allowance must be requested on an application for refund/credit (see 12 CSR 10-4.275).

(2) If a purchaser returns defective merchandise to the vendor and, in connection with the return, new merchandise is furnished, the vendor is subject to the use tax only on the cost of the new article less the allowance for merchandise returned.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 695-4 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.275 Application Required

(Rescinded October 30, 2000)

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 695-5 originally filed Oct.

28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-4.280 Filing Protest Payment Returns

PURPOSE: This rule prescribes the requirements of a protest payment return and interprets and applies section 144.700, RSMo.

(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 (see 12 CSR 10-3.552). The tax must be broken down as state tax, city tax and transportation tax. Three (3) checks must also be remitted: one (1) for the amount of state sales tax being paid under protest; another for the amount of local tax being paid under protest; and a third check for any amount of state and local tax not being protested.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 700-1 originally filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.290 Intent of Rules

PURPOSE: This rule clarifies the intent of rules issued with respect to the Missouri compensating use tax law.

(1) Rules are to interpret and exemplify, for administration and enforcement, the compensating use tax laws. If a particular taxpayer's 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 after January 10, 1976 (see 12 CSR 10-3.002).

(2) All rules issued by the Department of Revenue are intended only to be general guidelines. Particular facts and circumstances surrounding any given taxpayer's business transactions may vary greatly from the facts and circumstances intended to be described in the published rules (see 12 CSR 10-4.295).

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 705-2 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.295 Rulings

(Rescinded January 30, 2000)

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 705-3 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

12 CSR 10-4.300 No Waiver of Tax

PURPOSE: This rule indicates the lack of authority for the director of revenue to waive outstanding use tax.

(1) There are not provisions in Missouri law where the director of revenue has the authority to waive or release a claim against outstanding use tax nor is s/he empowered to settle for a lesser amount of tax than the appropriate amount due the state.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 705-4 originally filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.

*Original authority: 144.705, RSMo 1959.

State ex rel. St. Louis Shipbuilding & Steel Co. v. Smith, 201 SW2d 153 (Mo. 1947). The director may not extinguish a lawful indebtedness to the state.

12 CSR 10-4.305 Collection Allowance

PURPOSE: This rule indicates that late remitters do not receive the two percent collection fee and interprets and applies section 144.710, RSMo.

(1) All vendors required to remit Missouri use tax to the director of revenue, who shall fail to do so on or before the due date, will not be entitled to the two percent (2%) collection fee.

AUTHORITY: section 144.705, RSMo 1994.* U.T. regulation 710-1 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

*Original authority: 144.705, RSMo 1959.

12 CSR 10-4.310 Timely Filing

PURPOSE: This rule refers to the postmark being prima facie evidence in determining the date a return is filed and interprets and applies section 144.655, RSMo.

(1) Returns must be filed as stated in section 144.655, RSMo. The postmark date of the envelope will be prima facie evidence of the date of filing the return.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 710-2 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.315 Fifteen Days—Defined Personal Service

(Rescinded December 11, 1976)

AUTHORITY: section 144.705 RSMo 1969. Rule filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 17, 1976, effective Dec. 11, 1976.

12 CSR 10-4.320 Sales Tax Rules Apply

PURPOSE: This rule provides that rules issued under certain sections of the sales tax law apply to use taxes and interprets and applies section 144.720, RSMo.

(1) All sales tax rules pertaining to the state sales tax sections 144.170, 144.220 and 144.230, RSMo apply to the use tax.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 720-1 originally filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.330 Application for Refund/Credit—Amended Returns

(Rescinded October 30, 2000)

AUTHORITY: section 144.705, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-4.340 Dual Operators

PURPOSE: This rule indicates when a contractor is considered a dual operator and sets forth the procedures to be used by the dual operator to determine when purchases become subject to use tax. Examples are given for clarification purposes.

(1) A Missouri contractor who purchases materials and supplies from an out-of-state vendor for both consumption and resale is

operating as a dual operator. For use tax purposes, a dual operator shall adopt the following procedures:

(A) For items which the Missouri contractor purchases from an out-of-state vendor and for which s/he has not been charged tax equal to or greater than the Missouri state tax and which the contractor uses in his/her operation, the contractor is subject to use tax;

(B) For items which the Missouri contractor purchases for both consumption and resale, the contractor should present an exemption certificate to the out-of-state vendor for items purchased. Subsequently, when an item is removed from the contractor's inventory, for personal use by the contractor or in fulfillment of a contract, at that point, the contractor should remit use tax on that transaction. If an item is removed from inventory as part of a sale at retail, the contractor should charge sales tax on the gross receipts of the sales; and

(C) For items which the Missouri contractor purchases from an out-of-state vendor for a contract job which is out-of-state and where the item never enters Missouri, no Missouri use tax is due.

(2) Example: Handy Contracting, a Missouri contractor, purchases a stairway lift elevator from Hi-Flite Corporation, an out-of-state company. This purchase by Handy Contracting is solely for use in the operation as a contractor and will be installed in Missouri. If Hi-Flite Corporation has not collected Missouri use tax on this lift, Handy Contracting must pay use tax.

(3) Example: Handy Contracting, a Missouri contractor, purchases five (5) stairway lift elevators from Hi-Flite Corporation, an out-of-state company. Handy Contracting maintains these lifts in inventory. Handy Contracting should give Hi-Flite Corporation a resale exemption certificate. As part of a contract, Handy Contracting removes a lift from the inventory and installs it in a building. Handy Contracting should self-assess use tax on the lift. The next day Handy Contracting sells a lift to Alex Contracting, also a Missouri contractor. Handy Contracting is subject to sales tax upon the gross receipts from the sale.

(4) Example: Handy Contracting, a Missouri contractor, purchases a stairway lift elevator from Hi-Flite Corporation, an out-of-state company, with delivery to an out-of-state construction site. Handy Contracting does not owe Missouri use tax on this purchase, however, it may owe use tax to the state in which the contract is being performed.

AUTHORITY: section 144.705, RSMo 1994. Original rule filed Oct. 15, 1985, effective March 24, 1986.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.600 Return Required

PURPOSE: This rule interprets the use tax law as it applies to use tax return filing requirements and interprets and applies sections 144.655, and 144.660, RSMo.

(1) A use tax return must be filed and completed in its entirety.

(2) If the state use tax collections exceed two hundred fifty dollars (\$250) in any one (1) calendar month, the business is required to report and remit tax for this month by the twentieth of the following month. Each month stands on its own and the two hundred fifty dollars (\$250) is not a cumulative total. In completing the return for a calendar quarter in which a monthly return has been filed, tax should be computed and shown only for the months not previously filed. The months covered by the return and the month previously filed must be clearly stated on the return.

AUTHORITY: section 144.705, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.610 Annual Filing

PURPOSE: This rule interprets the use tax law as it applies to the annual filing of use tax returns and interprets and applies sections 144.655 and 144.660, RSMo.

(1) Any person whose state use tax liability is less than forty-five dollars (\$45) in each calendar quarter may file an annual return for that calendar year on or before January 31 of the succeeding year.

AUTHORITY: section 144.705, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.620 Aircraft

PURPOSE: This rule clarifies the use tax law as it applies to purchases of aircraft.

(1) Any business, interstate or intrastate, that is not a common carrier, which makes an out-of-state purchase of an airplane to be stored, consumed or used in Missouri is liable for Missouri use tax on the purchase price of the airplane, pursuant to *Director of Revenue v. Superior Aircraft Leasing Company, Inc.*, 734 SW2d 504 (1987) and *Complete Auto Transit v. Brady*, 430 U.S. 274, 97 S. Ct. 1076, 51 L. Ed. 2d 326 (1977). A credit will be given for any sales or use tax paid to another state which is less than or equal to the Missouri sales/use tax liability. If this out-of-state tax is less than the use tax which would be due Missouri, Missouri imposes a tax equal to the difference.

AUTHORITY: section 144.610, RSMo 1994. Original rule filed June 14, 1988, effective Oct. 27, 1988.*

**Original authority: 144.610, RSMo 1959, amended 1961.*

12 CSR 10-4.622 Marketing Organizations Soliciting Sales Through Exempt Entity Fund-Raising Activities

PURPOSE: This rule interprets the use tax law 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 use tax on the marketing organizations' net receipts from those sales. Use tax is not due or required to be collected on the amount retained by the exempt organization or that portion of the sales proceeds which will be returned to the exempt organization.

(2) Use tax shall be collected on each item sold in accordance with sections 144.610.2. and 144.635, 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.

(3) The marketing organization should instruct the exempt organization that use tax must be collected on the portion of gross receipts returned to the marketing organization.

(4) 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).

(5) 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 twenty-five cents (25¢) use tax in addition to the ten dollar (\$10) sales price. The twenty-five cents (25¢) represents use tax at the hypothetical rate of 4.225% 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 twenty-five cents (25¢) to the Department of Revenue for use tax on its six dollar (\$6) net receipts. It makes no difference whether school "B" (which collects ten dollars and twenty-five cents (\$10.25) from each customer) sends the ten dollars and twenty-five cents (\$10.25) to marketing organization "A" which then returns four dollars (\$4) to band "B" or sends only six dollars and twenty-five cents (\$6.25) to marketing organization "A".

(6) Example 2: Using the same facts as Example 1 in section (5), school "B" could charge ten dollars (\$10) for the widget with the express understanding that the ten dollars (\$10) charged includes the use tax. The tax would be computed on the six dollars (\$6) received by "A". The tax would still be twenty-five cents (25¢) ($\$6 \times 4.225\%$). "A" would be required to remit twenty-five cents (25¢) per widget to the Department of Revenue. School "B" would receive three dollars and seventy-five cents (\$3.75) per widget sold which would not be subject to tax.

AUTHORITY: section 144.705, RSMo 1994. Original rule filed Feb. 23, 1989, effective Aug. 10, 1989.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.624 Change of State Use Tax Rate
(Rescinded February 28, 2001)

AUTHORITY: section 144.705, RSMo 1994. Emergency rule filed Sept. 29, 1989, effective Oct. 9, 1989, expired Feb. 5, 1990. Original rule filed Sept. 29, 1989, effective Jan. 26, 1990. Rescinded: Filed Aug. 24, 2000, effective Feb. 28, 2001.

12 CSR 10-4.626 Direct Pay Agreement

PURPOSE: This rule lists the requirements a business or corporation must satisfy to enter into a use tax direct pay agreement with the Department of Revenue.

(1) A business or corporation may apply to the department for a use tax direct pay agreement. The application must be submitted in writing. The direct pay agreement is an agreement by which the department allows a business or corporation to pay consumer's use tax on its purchases directly to the department rather than vendor's use tax to the seller.

(2) The following requirements must be satisfied before the department will consider a business or corporation for a direct pay agreement:

(A) Submission of an application 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 under sections 144.600–144.745, 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 which are stored, used or consumed by the applicant, excluding items which are exempted under section 144.617, RSMo;

(C) The accrued taxes will be paid in accordance with the applicant business' or corporation's filing status as determined by the *Revised Statutes of Missouri*. The applicant business or corporation will be assessed penalties and interest in accordance with sections 144.665 and 144.720, RSMo for failure to file and to pay the accrued taxes in accordance with their filing status;

(D) The applicant business or corporation will not qualify for the timely filing discount provided in section 144.710, RSMo; and

(E) Records to support that the business or corporation annually purchases taxable items in excess of seven hundred fifty thousand dollars (\$750,000), excluding the value of taxable items for which exemption certificates were given.

(3) The department has sole authority to decide whether the applicant qualifies for a direct pay agreement.

(4) An applicant who has been denied a direct pay agreement may reapply. The applicant will be required to meet the qualifications for a direct pay agreement.

(5) The holder of a direct pay agreement must furnish a copy of the direct pay certificate to all sellers from whom they make purchases of taxable items. The direct pay certificate relieves the seller of any obligation to collect vendor's use tax imposed by Chapter 144, RSMo and Article IV, Sections 43A and 47A of the Missouri Constitution from the holder. This certificate will apply to all purchases of taxable items from the date of the certificate.

(6) A direct pay agreement and direct pay certificate will remain valid and enforceable until the department issues a cancellation notice. The department may cancel a direct pay agreement at any time.

(7) The department will send notice of cancellation to the holder of the direct pay certificate by certified or registered mail.

(8) The holder of a direct pay certificate may notify the department that the direct pay certificate will be voluntarily relinquished.

(9) Upon receipt of a notice of cancellation from the department, 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 payment certificate will be required to provide proof of qualification every two (2) years from the date of the original authorization.

(11) Any seller who accepts a direct payment certificate in good faith from a purchaser can rely on the certificate until s/he receives written notice of cancellation from the purchaser.

AUTHORITY: sections 144.190.4 and 144.705, RSMo 1994. Original rule filed July 2, 1990, effective Dec. 31, 1990.*

**Original authority: 144.190.4, RSMo 1939, amended 1941, 1943, 1945, 1979, 1986, 1988, 1991 and 144.705, RSMo 1959.*

12 CSR 10-4.628 Accrual Basis Reporting

PURPOSE: This rule defines gross receipts and clarifies how vendors are to report use tax when their accounting method approximates gross receipts.

(1) Section 144.655, RSMo requires vendors to file returns with the director of revenue showing the amount of gross receipts from taxable sales and services. Gross receipts, as defined in section 144.010.1(3), RSMo, is

the total amount received by the vendor for the sale or lease of property or taxable services, less refunds for returned property.

(2) In order to conform with generally accepted accounting principles, many businesses recognize and account for sales on an accrual basis for financial reporting and federal income tax purposes. Under the accrual basis of accounting, sales are recognized in the period in which the transaction is completed, rather than the period in which payment is actually received.

(3) Vendors may report sales on an accrual basis for the vendors' administrative convenience, if that method materially equals gross receipts over several reporting periods. Accrual basis reporting must meet the following criteria:

(A) The difference between accrual and gross receipts basis reporting shall be limited to changes in accounts receivable balances and refunds to purchasers during the reporting period;

(B) Periodic adjustments for bad debts must be reasonable and verifiable, must not exceed the bad debts expense claimed on the federal income tax return and may not exceed the taxable sales reported for the period in which the adjustment is taken; and

(C) The taxpayer must use a consistent basis of reporting. Any taxpayer changing the basis of reporting shall notify the director of revenue of the change and its effective date.

(4) The director of revenue reserves the right, upon written notification, to require any taxpayer to report future periods on a gross receipts basis with no accrual provision.

AUTHORITY: section 144.705, RSMo 1994. Original rule filed Oct. 24, 1990, effective March 14, 1991.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-4.630 Basic Steelmaking Exemption—Use Tax

PURPOSE: This rule explains the circumstances under which the purchases of electricity and gas by basic steel-makers are exempt from 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 use 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 144.705, RSMo 1994.
Original rule filed Nov. 15, 1990, effective
June 10, 1991.*

**Original authority: 144.705, RSMo 1959.*

**12 CSR 10-4.632 Certificate of Deposit—
Use Tax**
(Rescinded March 30, 2001)

*AUTHORITY: sections 144.625 and 144.705,
RSMo 1994. Original rule filed Dec. 4, 1990,
effective April 29, 1991. Amended: Filed Feb.
4, 1991, effective June 10, 1991. Rescinded:
Filed Sept. 27, 2000, effective March 30,
2001.*

**12 CSR 10-4.634 Delivery, Freight and
Transportation Charges—Use Tax**
(Rescinded April 30, 2001)

*AUTHORITY: section 144.705, RSMo 1994.
Original rule filed Oct. 1, 1993, effective
April 9, 1994. Rescinded: Filed Oct. 6, 2000,
effective April 30, 2001.*