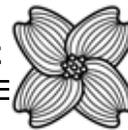




RULES OF
Department of Revenue
Division 10—Director of Revenue
Chapter 113—Sales/Use Tax—Use Tax

Title	Page
12 CSR 10-113.200 Determining Whether a Transaction is Subject to Sales Tax or Use Tax	3
12 CSR 10-113.300 Temporary Storage	4
12 CSR 10-113.320 Sales Tax Rules Apply	5
12 CSR 10-113.400 Marketplace Facilitator.....	5



TITLE 12 – DEPARTMENT OF REVENUE
Division 10 – Director of Revenue
Chapter 113 – Sales/Use Tax – Use Tax

12 CSR 10-113.200 Determining Whether a Transaction is Subject to Sales Tax or Use Tax

PURPOSE: Chapter 144, RSMo, contains the statutory provisions governing application of sales and use tax. This rule explains how to determine whether a transaction is subject to sales tax or use tax. This rule also explains what transactions are exempt from sales tax under the interstate commerce exemption in section 144.030.1, RSMo.

(1) In general, a sale of tangible personal property is subject to sales tax if title to or ownership of the property transfers in Missouri unless the transaction is in commerce. The seller must collect and remit the sales tax. If a sale is not subject to Missouri sales tax but the property is stored, used, or consumed in Missouri, the transaction is subject to use tax. If the transaction is subject to use tax and the seller has nexus with Missouri, the seller must collect the tax at the time of the sale and remit it to the department. If the seller does not collect the tax, the buyer must pay use tax directly to the department. If a sale of tangible personal property is not subject to Missouri sales tax and the property is not stored, used, or consumed in this state, no Missouri tax is due. A sale of a taxable service is subject to sales tax if the service is performed in Missouri. If the service is not performed in Missouri, the sale is not subject to tax.

(2) Definition of Terms.

(A) Nexus – contact with the state.

(B) In commerce – a transaction is in commerce if the order is approved outside Missouri and the tangible personal property is shipped from outside Missouri directly to the buyer in Missouri.

(3) Basic Application of Taxes.

(A) Title transfers when the seller completes its obligations regarding physical delivery of the property, unless the seller and buyer expressly agree that title transfers at a different time. A recital by the seller and buyer regarding transfer of title is not the only evidence of when title passes. The key is the intent of the parties, as evidenced by all relevant facts, including custom or usage of trade.

(B) Unless otherwise agreed by the parties, when a Missouri seller delivers tangible personal property to a third-party common or contract carrier for delivery to an out-of-state location, title does not transfer in Missouri and the sale is not subject to Missouri sales tax. A buyer that carries its own goods is not acting as a common or contract carrier.

(C) When an out-of-state seller delivers tangible personal property to a third-party common or contract carrier for delivery to Missouri, title transfers in Missouri. If delivery is made to seller or an agent of seller (other than a third-party common or contract carrier) in Missouri and subsequently delivered to the buyer in Missouri, the sale is subject to Missouri sales tax. If delivery is made directly from the out-of-state seller to the buyer in Missouri, the sale is subject to sales tax if the order was approved in Missouri. If the order was approved outside Missouri, the sale is not subject to sales tax, but the transaction is subject to use tax unless otherwise exempt.

(D) Leases of tangible personal property generally follow the same taxing guidelines as sales of tangible personal property.

Leases of tangible personal property by Missouri lessors are subject to sales tax if the lessee obtains possession in Missouri. Leases of tangible personal property by non-Missouri lessors are subject to Missouri sales tax if the tangible personal property is located in Missouri prior to entering the lease and the lessee obtains possession in Missouri. Leases of tangible personal property that are not subject to sales tax are subject to use tax if the lessee stores, uses, or consumes the tangible personal property in Missouri.

(4) Examples.

(A) A seller accepts orders in Missouri. The seller fills orders from its warehouses located both within and without Missouri. A customer orders goods from the seller in Missouri. The order is filled from an out-of-state warehouse and shipped directly to the customer. The transactions are subject to sales tax because the order is accepted in Missouri.

(B) A customer purchases custom fabricated goods from a Missouri seller. The order for the goods must be approved at the seller's out-of-state headquarters. The goods will be shipped by the seller directly from the out-of-state facility to the customer's Missouri location. The sale is subject to use tax because the order was approved out-of-state and the goods were shipped from out-of-state directly to the customer in Missouri. The seller must collect and remit the use tax.

(C) A Missouri seller sells pens, calendars, cups and similar items with the customer's logo printed on them. The seller sends the orders to an out-of-state supplier to custom print the items that are drop shipped directly to the customer in Missouri. The sale is subject to sales tax because the customer's order taken by the seller is approved in Missouri.

(D) While visiting Missouri, an Illinois resident purchases a set of luggage at a Missouri department store. The buyer requests the seller to ship the luggage to an Illinois address. The sale is not subject to Missouri sales or use tax because title does not transfer in Missouri.

(E) An out-of-state customer purchases a kitchen table set from a Missouri seller. Under the terms of the sale, the seller is to ship the set to a Missouri location for storage until the customer is able to arrange to pick up the set with its truck or by third-party carrier. The sale is subject to sales tax.

(F) An Illinois construction contractor leases a backhoe from an Illinois lessor. Prior to entering the lease, the backhoe was located in Missouri. The contractor takes possession of the backhoe at the Missouri location. The lease is subject to sales tax.

(G) A seller has no place of business in Missouri. A sales representative who works from a non-Missouri location visits Missouri customers. All orders are accepted outside Missouri and goods are shipped to Missouri customers from outside the state. The seller must collect and remit use tax.

(H) A seller has a location in Missouri. A Missouri customer places an order directly with the seller's non-Missouri location via email. The goods are shipped directly to the Missouri customer from the non-Missouri location. The Missouri office does not participate in the sale. The seller must collect and remit use tax.

(I) An out-of-state vendor markets tangible personal property to Missouri residents via online and televised advertisements. The vendor does not own the items it markets. Instead, the vendor contracts with a third-party supplier to maintain and ship items purchased from its online and televised advertisements. A Missouri resident purchases a marketed item. Vendor instructs the third-party supplier to ship the purchased item to the Missouri resident. The third-party



supplier ships the item via common carrier to the Missouri resident. Title transfers from the third-party supplier to vendor in Missouri at the Missouri resident's home. Title then transfers from the vendor to the Missouri resident. The vendor must collect and remit sales tax.

AUTHORITY: sections 144.270 and 144.705, RSMo 2016. Original rule filed Jan. 10, 2002, effective July 30, 2002. Amended: Filed Jan. 10, 2023, effective July 30, 2023.*

**Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961, 2008, and 144.705, RSMo 1959.*

12 CSR 10-113.300 Temporary Storage

PURPOSE: section 144.610, RSMo imposes use tax on the sale of tangible personal property that is purchased for use, storage or consumption in this state. Section 144.620, RSMo creates a presumption that tangible personal property sold for delivery in or transportation to Missouri is for use, storage or consumption in Missouri unless otherwise excluded. Sections 144.605(10) and (13), RSMo define the incidence of "storage" and "use." These sections provide an exclusion from use tax for property that is purchased for temporary storage in Missouri with the intent to subsequently use the property outside Missouri. This rule interprets this exclusion.

(1) In general, the temporary storage of property in this state with the intent to subsequently use the property outside the state is not subject to use tax.

(2) Definition of Terms.

(A) Storage – Any keeping or retention in this state of tangible personal property purchased from an out-of-state vendor, except property for sale or property that is temporarily kept or retained in this state for subsequent use outside the state. To be "for subsequent use outside the state" the purchaser must intend at the time the property is delivered to a Missouri location to subsequently use the property outside the state.

(B) Temporary – Generally, property kept or retained for less than a year may be considered temporary.

(C) Use – The exercise of any right or power over tangible personal property incident to the ownership or control of that property, except temporary storage of property in this state for subsequent use outside the state, or for sale of the property in the regular course of business.

(3) Basic Application of Exclusion.

(A) The purchase of tangible personal property from an out-of-state vendor that is temporarily kept or retained in this state for subsequent use outside the state is not subject to use tax. Any use of the property involving the exercise of any right, dominion, control or power over the tangible personal property, other than temporarily keeping or retaining the property in this state for subsequent use outside the state, constitutes a taxable use.

(B) Keeping or retaining tangible personal property in this state for longer than a temporary period subjects the purchase of the property to use tax, even if the property will be used subsequently outside the state.

(C) The purchaser need not designate at the time of purchase which specific property is for subsequent use outside the state, provided the purchaser can otherwise establish that some of the property is intended for subsequent use out-of-state. Intent can be shown by demonstrating the normal practices

of the business or specific circumstances of the transaction. The commingling of property on which tax has already been paid with property on which tax has not already been paid, does not disqualify the property from the exclusion, but makes it difficult for the taxpayer to document which property was intended for use outside the state.

(D) The exclusion will not apply if any further processing, fabrication or other modifications are performed on or to the property while in this state.

(4) Examples.

(A) A Missouri contractor purchases from an out-of-state vendor materials and supplies for an out-of-state job. The items purchased are specifically ordered for the out-of-state job, are earmarked as such on the purchase orders and are delivered to the contractor temporarily in Missouri. No further processing, fabricating or other modifications are performed on the items. The materials and supplies purchased are not stock items that may be used in other ongoing jobs either within or without the state. The purchase of the materials and supplies would not be subject to use tax in Missouri.

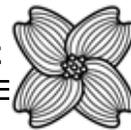
(B) Same facts as in Example A, however the Missouri contractor performs fabrication labor on the materials in preparation for the out-of-state job at its location in Missouri. The purchase of the materials would then be subject to Missouri use tax.

(C) A Missouri law firm that has an office in Kansas orders ten computers from an out-of-state vendor for use in its Kansas office. The purchase orders are specifically earmarked accordingly. The computers will only be in Missouri for a few days in order to load the firm's network software. The purchase of the computers would be subject to Missouri use tax because loading the firm's software constitutes a taxable use.

(D) A taxpayer purchases equipment from an out-of-state vendor for storage in Missouri that it intends at the time of purchase to transfer the equipment to an out-of-state facility in eighteen months. The purchase is subject to use tax.

(E) Taxpayer is a wholesaler of goods. It purchased samples from an out-of-state vendor, which were delivered directly to its Missouri warehouse. The taxpayer at the time of purchase intended that twenty percent (20%) of the samples would go to its Missouri sales force and the other eighty percent (80%) would go to its out-of-state salespersons. All the samples were commingled and were only in Missouri for three (3) months. Because the wholesaler intended to send eighty percent (80%) of the samples out-of-state, the purchase of the eighty percent (80%) is exempt from use tax. However, the wholesaler should pay state and local use tax on any portion of the eighty percent (80%) used in Missouri at the time the samples are removed from the warehouse. Local use tax applies based on the location of the warehouse.

(F) A Missouri wholesaler purchases brochures from non-Missouri suppliers. The brochures are shipped to the wholesaler's warehouse in Missouri for later shipment to facilities both in-state and out-of-state. The wholesaler does not know at the time of purchase exactly when and where the brochures will be shipped. On average the brochures are stored for six (6) months. As brochures are needed for in-state and out-of-state customers, they are removed from storage and shipped to customers free of charge. Because the wholesaler intended to send some of the brochures out-of-state, the purchase is exempt from use tax. However, the wholesaler should pay state and local use tax on all items used in Missouri at the time the brochures are removed from the warehouse. Local use tax applies based on the location of the warehouse.



(G) Same facts as in Example F except all of the brochures are intended for use in Missouri. The wholesaler should pay tax on the entire purchase price at the time of purchase. Because the intent was for the brochures to be used in Missouri, any occasional out-of-state use does not qualify for the temporary storage exemption.

(H) Same facts as in Example F except some brochures are purchased from an in-state vendor and sales tax is paid at the time of purchase. The wholesaler commingles the taxed brochures purchased in state with the untaxed brochures purchased from out-of-state. Unless the wholesaler maintains specific documentation of which brochures will be used in-state and out-of-state the use tax is due on the commingling of the brochures.

AUTHORITY: section 144.705, RSMo 1994. Original rule filed June 8, 2000, effective Dec. 30, 2000.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-113.320 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.

In general, 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 2016. This rule originally filed as 12 CSR 10-4.320. U.T. regulation 720-1 originally filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Moved to 12 CSR 10-113.320 and amended: Filed Oct. 2, 2018, effective April 30, 2019.*

**Original authority: 144.705, RSMo 1959.*

12 CSR 10-113.400 Marketplace Facilitator

PURPOSE: Chapter 144, RSMo, contains the statutory provisions governing application of use tax. This rule explains who qualifies as a marketplace facilitator and how a seller should report their use tax transactions.

(1) In general, a marketplace facilitator must collect and remit use tax on behalf of sellers that utilize the marketplace facilitator's service or services to list tangible personal property or services for sale regardless of the forum. A marketplace facilitator who also has their own tangible personal property or services for retail sale must remit tax for those sales separately.

(2) Definition of Terms.

(A) Nexus – contact with the state.

(B) Economic Nexus – selling tangible personal property for delivery into this state, provided the seller's gross receipts from taxable sales from delivery of tangible personal property into this state in the previous calendar year or current calendar year exceeds one hundred thousand dollars (\$100,000).

(C) Marketplace Facilitator – a person that facilitates a retail sale by a marketplace seller by listing or advertising for sale by the marketplace seller, in any forum, tangible personal property or services that are subject to tax under Chapter 144,

RSMo, and either directly or indirectly through agreements or arrangements with third parties collects payment from the purchaser and transmits all or part of the payment to the marketplace seller.

(D) Marketplace Seller – a seller that makes sales through any electronic marketplace operated by a marketplace facilitator.

(3) Basic Application of Taxes.

(A) A marketplace facilitator that facilitates a retail sale of tangible personal property or taxable services that are delivered into the state for a marketplace seller should collect and remit use tax on behalf of the marketplace seller.

(B) A marketplace seller should not report any sales made through a marketplace facilitator where the marketplace facilitator reported and remitted the tax. A marketplace seller must keep records of all sales made through a marketplace facilitator.

(C) If a marketplace facilitator has a physical presence in the state then it should continue to remit sales tax on those sales even if it is also remitting use tax on behalf of marketplace sellers.

(D) A marketplace facilitator is engaging in business in this state if the sales it facilitates and its own sales combined are more than one hundred thousand dollars (\$100,000) annually.

(4) Examples.

(A) A seller sells its own tangible personal property or services in the state and also sells tangible personal property or services for other sellers. The seller has sales of sixty thousand dollars (\$60,000) and facilitates sales of seventy thousand dollars (\$70,000). Because the total sales are in excess of one hundred thousand dollars (\$100,000), the seller is a marketplace facilitator and should collect and remit on behalf of the other sellers.

(B) A seller sells its own tangible personal property or services in the state and also sells tangible personal property or services for other sellers. The seller has sales of forty thousand dollars (\$40,000) and facilitates sales of thirty thousand dollars (\$30,000). Because the total sales are less than one hundred thousand dollars (\$100,000), the seller does not have economic nexus and should not collect and remit on behalf of the other sellers.

(C) A marketplace facilitator has a physical presence in the state and makes its own sales of tangible personal property or services. It should collect and remit sales tax on its own sales. It should collect and remit use tax on the sales it facilitates for other sellers.

(D) A seller has no physical presence in the state and sells less than one hundred thousand dollars (\$100,000) of its own tangible personal property through its website to addresses in the state of Missouri. The seller does not facilitate sales for others. The seller is not a marketplace facilitator or marketplace seller.

AUTHORITY: sections 144.270 and 144.705, RSMo 2016. Original rule filed Jan. 10, 2023, effective July 30, 2023.*

**Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961, 2008, and 144.705, RSMo 1959.*