Rules of
Department of Revenue
Division 10—Director of Revenue
Chapter 108—Sales/Use Tax—Taxable Services

Title 12—DEPARTMENT OF REVENUE
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12 CSR 10-108.300 Sales of Electricity, Water, and Gas as Defined in Section 144, RSMo

PURPOSE: Section 144.020.1(3), RSMo, imposes a tax on the basic rate paid for sales of electricity, water, and gas to domestic, commercial, or industrial consumers. Section 144.030.2(23), RSMo, exempts from tax sales for domestic use of these services, as well as wood, coal, and home heating oil. Section 144.032, RSMo, provides cities and counties the option to reimpose certain local sales taxes on sales for domestic use. This rule explains the taxation of electricity, water, and gas.

(1) In general, sales of electricity, water, and gas to commercial or industrial consumers are subject to tax. Sales of these services to domestic consumers are exempt from state sales tax but may be subject to certain local sales taxes if reimposed by a city or county. Sales of electricity, water, and gas for agricultural use are excluded from tax.

(2) Definition of Terms.

(A) Basic rate—the rate charged for utility services, including any advance or equalized payment, surcharge, minimum, or flat rate. It does not include such things as refundable deposits, or separately stated charges for any franchise, occupation, sales, license, excise, privilege, or similar tax or fee of any kind imposed upon the supplier of the utility service by any taxing body or authority whether by statute, ordinance, or otherwise. The basic rate does include income taxes and other charges imposed on the seller even if the seller chooses to separately state such charges. The basic rate also includes any "payment in lieu of tax (PILOT)" imposed on municipal-owned utilities, even if separately stated.

(B) Domestic use—nonagricultural, nonindustrial, and noncommercial use. Sales made by regulated utilities pursuant to a "residential" rate classification are for domestic use. Sales through a single or master meter for residential nursing homes, apartments, or condominiums, including service for common areas and facilities and vacant units, but not including administrative and maintenance areas, are sales for domestic use.

(C) Utilities—electricity, water, or gas services.

(3) Basic Application of Tax.

(A) Sales or use taxes apply to all sales of electricity, water, and gas to commercial or industrial consumers.

(B) Sales tax does not apply to sales of electricity, metered water service, and gas if sold for domestic use. Certain local sales taxes apply if reimposed by a city or county.

(C) Sales tax does not apply to agricultural use of utility services, including use by greenhouses.

(D) Sales of propane gas, wood, coal, or home heating oil for domestic use are exempt from sales tax. Certain local sales taxes apply if reimposed by a city or county.

(E) Sales of sewer service for either commercial or domestic use are not subject to tax if billed separately.

(F) Sales of unmetered water service for domestic use are subject to tax except in the City of St. Louis, where metered and unmetered water service for domestic use are exempt from state sales tax.

(G) Persons making domestic purchases of service exempt from sales tax that use a portion of the service for nondomestic purposes must file a return and pay sales tax by April 15 of the year following the year of purchase on that portion of service used for nondomestic purposes.

(H) Persons making commercial purchases of service subject to state tax that use a portion of the service for domestic purposes may file for a refund for that portion of the utility service. See 12 CSR 10-102.016.

(4) Examples.

(A) An apartment complex purchases electricity. To the extent the purchases are for residents of the complex or for common areas, the purchases are exempt. The complex may issue an exemption certificate to its utility supplier. The purchases are subject to local sales taxes if reimposed by the local taxing authorities. If some of the electricity is used for the complex office or other facilities related to the business of the complex owner, the complex must remit state tax on these purchases directly to the department.

(B) A farmer has a single meter that services both the farm and his home. If the local taxing authorities have reimposed local tax on domestic use, the farmer must file a return and pay local sales tax directly to the department on the portion of the service used for his home.

(C) A company purchases natural gas from an out-of-state supplier, who has nexus with Missouri, for commercial use. The supplier must collect vendor's use tax on the sales price of the gas.

(D) A propane gas company located in City A delivers gas by commercial truck and meters the gas on the truck. The company delivers gas to a customer located in City B. The company should charge the local sales tax (if applicable) based on its business location in City A. If the meter is located on the customer's tank, the local tax rate is based on the location of the meter.

AUTHORITY: sections 143.961, 144.032, and 144.046, RSMo 2016, and sections 144.010 and 144.030, RSMo Supp. 2021. Original rule filed May 1, 2006, effective Nov. 30, 2006. Amended: Filed Oct. 12, 2021, effective April 30, 2022.*

**Original authority:143.961, RSMo 1972; 144.010, RSMo 1939, amended 1941, 1943, 1945, 1947, 1974, 1975, 1977, 1978, 1979, 1981, 1985, 1988, 1993, 1996, 1998, 1999, 2001, 2005, 2011, 2013, 2017, 2018; 144.030, RSMo 1939, amended 1941, 1943, 1945, 1949, 1961, 1965, 1967, 1969, 1977, 1979, 1980, 1982, 1983, 1985, 1986, 1988, 1989, 1991, 1994, 1995, 1996, 1997, 1998, 1999, 2003, 2004, 2005, 2007, 2008, 2012, 2013, 2014, 2015, 2016, 2018; 144.032, RSMo 1979, amended 1986, 1987; and 144.046, RSMo 1995.*

***American Healthcare Management, Inc. v. Director of Revenue**, 984 S.W.2d 496 (Mo. banc 1999). The court found that nursing homes may purchase utility service exempt from sales tax for their residents under the domestic use provision.*

***Bert v. Director of Revenue**, 935 S.W.2d 319 (Mo. banc 1996). Section 144.190, RSMo, provides that only the taxpayer legally obligated to remit the tax has the right to request a refund directly from the state. However, Section 144.030.2(23)(c), RSMo, provides a limited exception: A person who purchases non-domestic utilities and uses any portion of those utilities for domestic use may seek a refund directly from the Department of Revenue.*

***Hyde Park Housing Partnership v. Director of Revenue**, 850 S.W.2d 82 (Mo. banc 1993). The court held that utilities purchased for vacant units by apartment owners were for domestic use because the taxpayer's tariff filed with the PSC was classified as residential.*

***Norwin G. Heimos Greenhouse, Inc. v. Director of Revenue**, 724 S.W.2d 505 (Mo. banc 1987). The court held that agricultural purchases of utility service are excluded from taxation. It concluded that agricultural users of utilities are distinct from industrial or commercial users. The statute taxes only industrial or commercial users; therefore, agricultural consumers are excluded from tax.*

***Consolidated Fuel Corp. v. Director of Revenue** (AHC 1993). The Administrative*

Hearing Commission held that transportation charges incurred in conjunction with the purchase of natural gas from an out of state supplier were a part of the sale and subject to use tax. The commission noted that there was only one carrier, the pipeline, and the purchaser had no choice as to delivery.

12 CSR 10-108.600 Transportation Fares

PURPOSE: Section 144.020.1(7), RSMo imposes a tax on certain intrastate transportation fares. This rule explains the application of this section to transportation fares.

(1) In general, sales of tickets by every person operating a railroad, boat, and such buses and trucks as are licensed by the Division of Motor Carrier and Railroad Safety of the Department of Economic Development, engaged in the intrastate transportation of persons for hire are subject to tax.

(2) Definition of Terms.

(A) Intrastate transportation—The transportation of a person from one location in Missouri to another location in Missouri.

(B) Division—Division of Motor Carrier and Railroad Safety of the Department of Economic Development.

(3) Basic Application of Tax.

(A) Gross receipts from the sale of tickets for intrastate transportation of persons for hire by persons operating buses and trucks licensed by the division are subject to tax. The gross receipts from the sale of tickets for intrastate transportation of persons for hire by persons operating a railroad, sleeping car, dining car, express car or boat are also subject to tax. Federal law prohibits taxation of receipts from the intrastate transportation of persons for hire in air commerce.

(B) Transportation charges by taxicabs, limousine services and buses that are not required to be licensed by the division are not subject to tax.

(C) Transportation charges provided on a contract basis, when no ticket is issued, are not subject to tax.

(D) Passengers engaged in an interstate trip must pay tax on the intrastate portion of a ticket, if separately stated.

(4) Examples.

(A) A person purchases a bus ticket for travel from St. Louis, MO to Kansas City, MO. The gross receipts from the ticket sale are subject to tax.

(B) A person is traveling from Indianapolis, IN to Denver, CO. The ticket separately states the charges between St. Louis, MO to Kansas City, MO. The separate charges for this journey are subject to tax.

(C) A company charters a bus to take its employees to Sedalia, MO. No tax is due because there is no sale of tickets.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed June 13, 2000, effective Dec. 30, 2000.*

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

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

***Ryder Student Transportation Services, Inc. v. Director of Revenue**, 896 S.W.2d 633 (Mo. banc 1995). Taxpayer's charter bus services were not subject to tax because the service was provided on a contract basis, and the contract did not provide for the issuance of any tickets.*

12 CSR 10-108.700 Lease or Rental of Tangible Personal Property

PURPOSE: This rule explains the application of tax to leases or rentals of tangible personal property (other than motor vehicles, trailers, boats or outboard motors) under section 144.020.1(8), RSMo.

(1) In general, payments for the lease of tangible personal property are subject to tax unless the lessor paid tax on the purchase of the property. Payments for the lease of tangible personal property are exempt from tax if the sale of the tangible personal property would be exempt.

(2) Definition of Terms.

(A) Lease—any transfer of the right to possess or use tangible personal property for a term in exchange for consideration. This includes a rental. However, if tangible personal property is used to provide a service to a customer and the use of the property is a necessary or mandatory part of the service transaction, then any temporary transfer of the property to the customer as part of the service transaction is not a lease or rental of the property.

(B) Lessor—a person who transfers the right to possess or use tangible personal property under a lease.

(C) Lessee—a person who receives the right to possess or use tangible personal property under a lease.

(D) Sublease—a lease of tangible personal property by a person who acquired the right to possess or use the property through a lease.

(E) Sublessor—a person who acquires the right to possess or use tangible personal property under a lease and subsequently transfers the right to possess or use the tangible personal property to another person under a sublease.

(3) Basic Application of the Tax.

(A) When a lessor purchases tangible personal property for the purpose of leasing, the lessor may pay tax on the purchase price or claim a resale exemption based on the intended lease of the tangible personal property.

1. If the lessor pays tax on the purchase price, the subsequent lease of the tangible personal property is not subject to tax.

2. If the lessor claims a resale exemption on its purchase, the amount charged for lease of the tangible personal property is subject to tax.

3. The election to pay tax on the purchase price must be made at the time the tangible personal property is purchased by the lessor. If tax is not paid on the tangible personal property at the time of the purchase, the lease is subject to tax.

4. If the lessor acquires the property in some way other than a taxable purchase (e.g., through a repossession or foreclosure, or by self-manufacturing), the amount charged for lease of the tangible personal property is subject to tax.

(B) Subleases—When property is leased for the purpose of subleasing and the original lessor did not pay tax on its purchase, the sublessor has the option of either paying tax on its lease payments, or claiming a resale exemption and collecting tax on its subsequent sublease of the property.

1. If the sublessor pays tax on its lease or rental, the sublease of the property is not subject to tax.

2. If the sublessor makes a claim of exemption from tax based on resale, the amount charged for sublease of the tangible personal property is subject to tax.

3. The election to pay tax on the rental must be made at the time the property is first rented to the sublessor. If tax is not paid on the property at that time, the sublease payments are subject to tax.

(C) Exemptions—Tangible personal property that is exempt from tax for any reason upon a sale of such property is also exempt from tax upon the lease of such property.

(D) Sale and leaseback transactions—Transactions structured as sales and leasebacks

will be treated as nontaxable financing transactions if: (i) the seller-lessee previously purchased the tangible personal property and paid tax on the purchase price; (ii) the "lease" transaction creates a security interest (see below) in the property; and (iii) the purchaser-lessor holds no ownership interest in the property, other than the security interest, and does not claim any deduction, credit or exemption with respect to the property for federal or state income tax purposes. All three (3) of these elements must be present, or the transaction will be treated as a sale and subsequent lease, and taxed as any other sale and lease.

1. Whether the transaction creates a security interest in the property depends on the intent of the parties. If the lessee becomes the owner of the property for no additional consideration or for nominal consideration after all of the agreed lease payments are made, then there is a presumption that the transaction creates a security interest. If the lessee must pay more than nominal consideration to acquire title and ownership to the property after all the agreed lease payments are made, then the agreement will be considered to create a security interest in the property only if four (4) or more of following factors are present:

A. The lessee is required to insure the property in favor of the lessor;

B. The lessee bears the risk of loss or damage;

C. The lessee is required to pay for taxes, repairs and maintenance;

D. The agreement establishes default provisions governing acceleration and resale;

E. The warranties that usually apply to true leases of such property are expressly disclaimed and excluded;

F. The lease term is equal to or exceeds the economic life of the property; or

G. The lease payments equal or exceed the purchase price of the property plus interest.

(E) Leases with an option to purchase—leases that include an option to purchase the property are taxed like all other leases. If the lessee exercises the option to purchase the property, the additional amount paid for the purchase of the property is also subject to tax.

(F) Leases of property in places of amusement, entertainment and recreation are taxed as provided in 12 CSR 10-108.100.

(G) Interstate transactions—Leases of property in Missouri and taken outside the state by the lessee are subject to Missouri sales tax. If the lessor or a common carrier delivers the property to a location outside Missouri and the property remains outside Missouri, the lease or rental is not subject to Missouri tax. Property leased from a lessor outside Missouri and used in Missouri is subject to Missouri use tax.

(H) Local tax—the local taxes applicable to a lease of tangible personal property are determined in the same manner as if the lease or rental were a sale of the property. See 12 CSR 10-117.100.

(I) Repair parts for leased equipment—A lessor may not claim a resale exemption on repair or replacement parts used on leased tangible personal property unless:

1. The parts are provided to the lessee at no additional charge and the lessor collects tax on the lease payments; or

2. The lessor charges the lessee for the part and collects tax on the charge.

(4) Examples.

(A) A taxpayer purchases seven lawnmowers and pays tax on the purchase price. The subsequent rental of the lawnmowers is not subject to tax.

(B) A taxpayer purchases seven lawnmowers and provides the seller with a resale exemption certificate. The subsequent rental of the lawnmowers is subject to tax, however, the purchase is not subject to tax. The taxpayer must collect and remit tax on the rental payments for the lawnmowers. After renting the lawnmowers for three years, the taxpayer sells them. The taxpayer must collect and remit tax on the sale of the used lawnmowers.

(C) A taxpayer purchases three airplanes and provides the seller with a resale exemption certificate. Taxpayer then offers the airplanes for rental. Taxpayer must collect and remit tax on the rental payments for the airplanes. Subsequently, taxpayer begins offering private charter services in addition to airplane rental. Taxpayer uses the rental airplanes to perform the private charter services. Taxpayer owes tax on the original purchase price of any airplanes used in the private charter service and should continue to pay tax on any future rental payments for such airplanes. Taxpayer should also continue to collect tax on the rental payments paid for any airplanes that are not used for private charters.

(D) A financial services company provides stock prices and other financial data to subscribers for a fee. The information is transmitted to the subscribers electronically. To receive the information, subscribers are required to use equipment provided by the financial services company. The subscription fee includes the price charged for the use of the equipment. Title to the equipment remains with the financial services company. The charges for the equipment do not constitute rental payments. The financial services company should pay tax on its purchase of the equipment.

(E) Same facts as subsection (4)(D) except the use of the equipment provided by the financial service company is not required or necessary to receive the data. The charges paid by the customers for the use of the equipment are rent, and are subject to tax, unless the company paid tax on its purchase of the equipment.

(F) A taxpayer leases twelve computers and provides the lessor with a resale exemption certificate. The taxpayer then subleases the computers to its customers. The sublease of the computers by the taxpayer is subject to tax, however, the original lease of the computers is not subject to tax.

(G) A charitable organization that has received a letter of exemption from the Department of Revenue leases a photocopier for use in its office. The lease payments are exempt from tax, provided the organization uses the copier in its charitable functions.

(H) A doctor purchases a medical device from a medical supply company and pays tax on the purchase price. Subsequently, the doctor enters into a sale and leaseback agreement with a leasing company. Pursuant to the agreement, the doctor transfers title to the medical device to the leasing company, and in return, the company pays the doctor the purchase price of the device. The agreement states that the leasing company will hold title to the medical device and lease it to the doctor. The lease payments will cover the full purchase price of the device plus interest. Title to the device will transfer back to the doctor for no additional consideration after all of the lease payments are paid. The agreement also states that the leasing company has no right to control or possess the medical device, as long as the doctor complies with the agreement. The leasing company holds no ownership interest in the property and does not claim any deduction with respect to the property on its federal income tax returns. Based on these facts, the leasing company only has a security interest in the medical device. The sale and leaseback agreement will be treated as a financing transaction, and neither the sale price paid by the leasing company nor the lease payments are subject to tax.

(I) Same facts as subsection (4)(H) except the sale and leaseback agreement expressly provides that the leasing company is entitled to all deductions, credits, and other tax benefits provided under federal tax law to the owner of the property. The leasing company claims a depreciation deduction with respect to the medical device. The sale and leaseback

agreement will be treated as a sale and a subsequent lease, and taxed as any other sale and lease.

(J) An appliance store purchases a washing machine from a manufacturer, and presents a resale exemption certificate to the manufacturer. The store subsequently leases the washing machine to a customer pursuant to a "lease-purchase" agreement. Under the agreement, the customer may purchase the washing machine at any time, by paying the agreed purchase price. Any lease payments paid by the customer will reduce the purchase price. The lease payments and the purchase option price are both subject to tax.

(K) A construction company leases a bulldozer from an equipment company that has its business office in Jefferson City, Cole County, Missouri. The construction company picks up the bulldozer from the leasing company's warehouse in Cape Girardeau, Missouri. The construction company then transports the bulldozer to its jobsite in Illinois. The construction company owes sales tax on the lease payments at the rate applicable to Jefferson City, Cole County, Missouri.

(L) Same facts as subsection (4)(K) except the leasing company delivers the bulldozer to the Illinois jobsite. The lease payments are not subject to Missouri tax.

(M) A Missouri construction company leases a crane from an Iowa equipment company. The crane is delivered to the construction company at its office in Kirkwood, St. Louis County, Missouri and used on construction jobs in Rolla and Springfield, Missouri. The construction company should pay Missouri use tax and any local use tax at the rate applicable to Kirkwood, St. Louis County, Missouri.

(N) Same facts as (4)(M) except the construction company picks up the crane in Iowa and brings it to St. Louis County. The construction company should pay Missouri use tax and any local use tax at the rate applicable to Kirkwood, St. Louis County, Missouri.

AUTHORITY: section 144.020, RSMo Supp. 2001. Original rule filed April 1, 2002, effective Oct. 30, 2002.*

Original authority: 144.020, RSMo 1939, amended 1941, 1943, 1945, 1947, 1963, 1965, 1972, 1975, 1979, 1982, 1985, 1996, 1998, 2001.

***Brambles Industries, Inc. v. Director of Revenue**, 981 S.W.2d 568 (Mo. banc 1998). Taxpayer leased pallets to a manufacturer, who in turn, transferred the pallets along with its products to the manufacturer's customers. The court found that the manufacturer transferred the right to use the pallets to the customers, and this transfer was sufficient to find that the taxpayer's lease to the manufacturer was for resale. The lease payments were not subject to tax.*

***Commercial Credit Equipment Corp. v. Parsons**, 820 S.W.2d 315 (Mo. App. 1991). Lists the factors for determining whether an agreement is a "true lease" or a "security agreement."*

***CMW Equipment, Inc. v. Director of Revenue** (AHC 1998). In a lease purchase transaction, where the lessor does not pay tax on its purchase price, the lessee/purchaser owes tax on both its lease payments and amount paid to exercise the purchase option.*

***John Fabick Tractor Co. v. Director of Revenue** (AHC 1996). State and local sales tax apply to equipment leased by a Missouri company and picked up by the lessees at the lessor's Missouri location.*

***Rocky Mountain Helicopters, Inc. v. Director of Revenue** (AHC 1992). Taxpayer entered into a lease agreement in Utah to lease a helicopter that was used in Missouri. The taxpayer took delivery of the helicopter in Utah. The Commission ruled that the lease payments were not subject to Missouri sales tax.*

***Pryor Executive Planes, Inc. v. Director of Revenue** (AHC 1987). Airplanes purchased for resale lost the resale exemption when the purchaser used the airplanes for charter services.*

***Hal Aviation, Inc. v. Director of Revenue** (AHC 1982). Airplane used for flying lessons was not rented to the flying students. The flight school could not claim a resale exemption on the airplanes it used for flying lessons.*