Rules of

Department of Revenue

Division 10—Director of Revenue
Chapter 104—Sales/Use Tax—Registration

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 104—Sales/Use Tax—Registration

12 CSR 10-104.020 Sales and Use Tax Bonds

PURPOSE: Section 144.087, RSMo requires all applicants for a retail sales tax license and all licensees in default in filing a return and paying taxes when due to file a bond in an amount to be determined by the Director of Revenue. Section 144.625, RSMo authorizes the department to require a bond from out-of-state vendors responsible for remitting vendor's use tax. This rule explains how to calculate and submit a bond, the different types of bonds that may be filed with the department, and how to obtain a bond refund.

(1) In general, all new taxpayers applying for a retail sales tax license or vendors use tax license, and taxpayers seeking reinstatement of a revoked license must file a bond in an amount determined by the director. The bond may be a cash bond, surety bond, certificate of deposit or an irrevocable letter of credit. The department will refund the bond to the taxpayer after two (2) years of satisfactory tax compliance or when the taxpayer closes its sales/use tax account, provided the account has no outstanding delinquencies.

(2) Basic Application of Tax.

(A) Taxpayers applying for a retail sales tax license or vendor's use tax license, or a taxpayer in default in filing a return and paying taxes, must submit a bond calculated at three (3) times the average monthly tax liability of the taxpayer. The department will not issue a license until the taxpayer submits sufficient bond. The bond amount of a new applicant is based on three (3) times the previous owner's average monthly tax liability for the prior twelve (12) months. The department estimates the bond based on the nature of the applicant's business. If the business is substantially the same as that of a previous owner, the previous business experience may be used. If the department determines a bond is insufficient to cover the taxpayer's liability, the department can require the taxpayer to adjust the bond amount.

(B) If the calculated bond amount of a new business is less than five hundred dollars ($500), the taxpayer can submit a minimum bond of twenty-five dollars ($25). If the bond is calculated at five hundred dollars ($500) or more, the calculated amount must be submitted, rounded to the nearest ten dollars ($10). A taxpayer reinstating a revoked license must submit the calculated amount even if that amount is less than five hundred dollars ($500).

(C) Cash bonds must be in the form of a cashier's check, money order, certified check or charged to a credit card accepted by the department. A completed and signed cash bond form must accompany a cash bond.

(D) A surety bond issued by an insurance company licensed for bonding in Missouri may be submitted as bond on behalf of the taxpayer. The surety bond must bear the seal of the insurance company, contain the current effective date, be accompanied by a power of attorney letter if it is signed by the attorney in fact, and must be signed by the applicant. The department maintains a list of insurance companies approved by the Department of Insurance to underwrite surety bonds in Missouri. Surety companies who fail to comply with the rules of the Department of Insurance or who unreasonably fail to pay a taxpayer's delinquency within thirty (30) days of notification that the taxpayer has become delinquent, are subject to removal from the department's list of authorized surety companies. Additionally, the department will not accept future bonds from this company until the Department of Insurance reinstates the surety company. A taxpayer bonded by a surety company that is removed from the department's authorized list has thirty (30) days to file a new bond with the Department of Revenue. Failure to meet this requirement will result in the license being declared null and void.

(E) A certificate of deposit (CD) issued by a state or federally chartered financial institution may be submitted as a bond. A CD must be a new CD in the names of the Missouri Department of Revenue and the taxpayer. The names on the CD must be joined by the word "AND." The CD must be endorsed by the taxpayer and include an Assignment of Certificate of Deposit Form when submitted to the department. Book entry CDs must be accompanied by a signed withdrawal slip or a letter from the issuing bank indicating the means of withdrawal. The interest derived from the CD is compounded at maturity. If a delinquency occurs, the department may redeem the CD. Any proceeds from the CD exceeding the delinquency, including interest proceeds, will be converted to a cash bond. The department will not reinvest the proceeds from the CD after it has been converted to a cash bond. The taxpayer is liable for all taxes on the interest derived from the CD or penalties resulting from cashing the CD prior to maturity even if the department seizes the CD (and accumulated interest) for payment of a delinquency incurred by the taxpayer.

(F) An irrevocable letter of credit issued by a commercial bank chartered under the laws of Missouri or chartered pursuant to the National Banking Act may be submitted as a bond. The letter of credit is irrevocable and the beneficiary is the department. Payment will be made immediately upon presentation of a demand for payment signed by the Director of Revenue or his/her designated representative. All letters of credit must conform to a required format provided by the department and be accompanied by an authorization for release of confidential information to the issuing bank. The issuer can cancel a letter of credit sixty (60) days after written notice is delivered to the department. If the department is notified of a cancellation, the taxpayer must substitute another bond within sixty (60) days. If the required bond is not received within the sixty (60) days, the taxpayer's license is null and void. If a taxpayer closes its business, the department will retain the letter of credit until satisfied that no claim exists against the letter.

(G) The department may refund or release a bond to the taxpayer after two (2) years of satisfactory tax compliance. A taxpayer's tax record is considered satisfactory if there is no tax due and the taxpayer has fully filed and paid all returns due in a timely manner. The bond will also be released or refunded when the taxpayer closes its sales/use tax account, files a final return, and owes no tax, penalties, or interest. If a taxpayer replaces its current bond by any other acceptable type of bond, the bond being replaced will also be returned.

(3) Examples.

(A) A taxpayer purchases a restaurant. The restaurant is currently open for business and the taxpayer will take over and continue the operation without interruption. In reviewing the previous owner's sales, the taxpayer's bond is calculated using the following tax liability of the previous owner:

January	$150.25
February	$160.75
March	$176.50
April	$185.75
May	$203.25
June	$226.50
July	$221.25
August	$210.25
September	$206.00
October	$185.75
November	$160.50
December	$211.25
Total	$2,298.00

The taxpayer divides $2,298 by 12 to arrive at the average monthly tax liability of $191.50. To compute the bond, he multiplies this figure by three, for a total of $574.50 ($191.50 × 3 = $574.50). This amount is rounded to the nearest $10, or $570. The taxpayer submits a $570 bond.

(B) A taxpayer is opening an ice cream shop. She has never been in business before and is not purchasing an existing business. She estimates her monthly tax liability to be $100. The taxpayer submits the minimum $25 bond since $300 is less than the $500 threshold.

(C) A taxpayer has purchased a craft store that was operated by another individual in the past. The previous craft store was closed for four months. Based on the previous craft store's sales, the amount of bond required is $750. The taxpayer must submit a $750 bond.

(D) A taxpayer has been operating a hot dog stand for the past 18 months. The sales tax license is revoked for failure to report and remit sales tax. The department already seized the bond originally submitted when registering as a new taxpayer. The department determines the average monthly liability over the past 12 months was $150. In order to have the license reinstated, the taxpayer must submit a new bond in the amount of $450 (3 × $150). The taxpayer cannot submit the minimum $25 bond even though the calculated bond is less than $500.

AUTHORITY: sections 144.270 and 144.705, RSMo 1994. Original rule filed June 8, 2000, effective Dec. 30, 2000.*

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

12 CSR 10-104.030 Filing Requirements

PURPOSE: This rule provides general guidance for determining a taxpayer's filing frequency and the taxpayer's obligation to file a return and remit tax on the due date according to sections 144.080, 144.081, 144.090, 144.100, 144.140, 144.160, 144.170, and 144.250, RSMo.

(1) In general, sellers of tangible personal property and taxable services are required to file and remit tax on an annual, quarterly, or monthly basis. Some sellers who file on a monthly basis may be required to remit tax on a quarter-monthly basis. Failure to file or remit taxes when due results in interest and additions to tax on the unpaid amount.

(2) Definitions.

(A) Calendar month—the first day to the last day of any of the twelve (12) months of the Gregorian calendar.

(B) Calendar quarter—the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(C) Quarter-month—

1. The first seven (7) days of a calendar month;

2. The eighth through the fifteenth day of a calendar month;

3. The sixteenth through the twenty-second day of a calendar month; and

4. The twenty-third day through the last day of a calendar month.

(3) Basic Application.

(A) Every licensed taxpayer must file a return and remit tax due by the statutory due date. The taxpayer must file a return even if no sales were made during the reporting period. The taxpayer is responsible for obtaining the necessary forms for filing. Failure to obtain tax forms does not relieve the taxpayer from filing.

(B) The taxpayer's filing frequency is determined by the amount of state sales tax collected by the taxpayer for all business locations during the previous calendar year. The filing frequency of a new business is based on the estimated taxable sales for the first year of operation. Local, conservation, or parks and soils taxes are not considered in determining filing frequency.

1. If state tax collections equal or exceed five hundred dollars ($500) per calendar month, the taxpayer must file and remit taxes on a monthly basis.

2. If state tax collections are less than five hundred dollars ($500) per calendar month but equal or exceed one hundred dollars ($100) in a calendar quarter, the taxpayer must file and remit taxes on a quarterly basis.

3. If state tax collections are less than one hundred dollars ($100) per quarter, the taxpayer must file and remit taxes on an annual basis.

(C) A monthly return is due on the twentieth day of the following month, except for the last month of a quarter. A quarterly return and a monthly return filed for the last months of a quarter are due on the last day of the following month. An annual return is due on January 31 following the calendar year. If the due date falls on a Saturday, Sunday, or state of Missouri holiday the return is due on the next business day.

(D) The United States Postal Service postmark date determines the date the return is filed. If the postmark date is on or before the due date, it is timely. If the postmark is after the due date, the return is late. If a return contains both a taxpayer's metered postal impression and the U.S. Postal Service postmark, the date of the U.S. Postal Service postmark date determines the date the return is filed. If the return is mailed by registered mail, the date of registration determines the date the return is filed.

(E) A taxpayer filing a return and remitting the tax due on or before the due date is permitted a two percent (2%) timely payment allowance.

(F) A taxpayer failing to file a return by the due date will be assessed additions to tax of five percent (5%) on the unpaid amount for each month a return is late, up to a maximum of twenty-five percent (25%). A taxpayer failing to pay a return by the due date will be assessed additions of five percent (5%) on the unpaid amount. If a taxpayer both fails to timely file and fails to timely pay, the additions for failing to timely file applies. A taxpayer that fails to pay the proper amount of tax by the due date must pay interest on the unpaid amount at a rate determined pursuant to section 32.065, RSMo.

(G) The department may extend the time to file or pay a return for up to sixty (60) days. In order to obtain an extension, the taxpayer must obtain approval from the department prior to the date due. Extensions will only be granted for good cause. If the department approves an extension to file or pay, the taxpayer is not permitted a two percent (2%) timely payment allowance. Interest also accrues on any amount not paid by the due date.

(H) The department may require a taxpayer to remit state tax on a quarter-monthly basis if the taxpayer's state tax is fifteen thousand dollars ($15,000) or more per month in each of at least six (6) months of the prior twelve (12) months. A quarter-monthly taxpayer must remit the tax within three (3) banking days after the end of each quarter-monthly period. The postmark date or registration date of the remittance will determine timeliness of the quarter-monthly payment. A quarter-monthly taxpayer must file a monthly return and remit any unpaid amounts.

(I) A taxpayer failing to remit a quarter-monthly payment is assessed a five percent (5%) penalty on the underpayment. A penalty will not be assessed if the quarter-monthly remittances are at least:

1. Ninety percent (90%) of the state tax due for the month; or

2. Twenty-five percent (25%) of the average monthly state tax liability of the taxpayer for the previous calendar year. The

department excludes the highest and lowest monthly liability when calculating the average monthly liability.

(J) If a penalty is due, the underpayment amount is calculated as the difference between any timely remittance and the lesser of the two (2) amounts above. The penalty will not be imposed in the first two (2) months the seller is obligated to remit quarter-monthly tax or if the taxpayer can demonstrate reasonable cause.

(4) Examples.

(A) A taxpayer's average monthly taxable sales are $15,000. The taxpayer's filing frequency is monthly because state tax collections computed as follows exceeds $500 per calendar month—$15,000 × 4% (state rate) = $600. Note: Local, conservation, or parks and soils taxes are not considered in determining filing frequency.

(B) A taxpayer prepares its February return on March 20 and calculates tax due at $25,000. When preparing the return the taxpayer takes the 2% timely payment allowance equaling $500. The postal carrier picks up the return and payment on its last run of the day at 5:00. The post office postmarks all mail from its 5:00 pick-up for the next day. Because the return is postmarked on March 21, the return is 1 day late. The taxpayer loses the 2% timely payment allowance. The $25,000 is subject to 5% additions to tax. Interest accrues on $500 until it is paid to the department.

(C) A taxpayer prepares its February return on March 19. When preparing the return the taxpayer takes the 2% timely payment allowance equaling $500. The taxpayer sends the return and payment to its mailroom for metering. The taxpayer's mailroom meters the envelope on March 20. The postal carrier picks up the return on its last run of the day at 5:00. The post office postmarks all mail from its 5:00 pick-up for the next day. Because U.S. Postal Service's postmark is March 21, the return is 1 day late.

(D) A taxpayer sends a check for its February tax on March 10. The taxpayer discovers it sent the check without the return and mails the return on April 30. The taxpayer retains its 2% allowance because payment was received before the due date.

(E) A business' average monthly state tax for the previous calendar year equals $20,000. The estimated quarter-monthly payment is $5,000 per quarter-monthly period. The business' actual state tax collections are $6,000 per quarter-monthly period. If the business remits quarter-monthly payments of $5,000 timely, no penalty is charged. If the business underpays 1 of the estimated quarter-monthly payments by $2,000 (it remits $3,000), the penalty is 5% of the difference between the amount paid, $3,000, and the estimate, $5,000. The penalty is calculated as follows: $5,000 – $3,000 = $2,000 × 5% penalty = $100.

(F) A business elects to make quarter-monthly payments on an actual basis. If the business pays at least 90% of the state tax collections for the month with the quarter-monthly payments, no penalty is charged. If the business does not meet the required 90% state tax collections for the month with the quarter-monthly payments, the penalty is 5% of the difference between the amount paid and the required 90% state tax collections.

AUTHORITY: section 144.270, RSMo Supp. 2012, and section 144.705, RSMo 2000. Original rule filed June 29, 2000, effective Dec. 30, 2000. Amended: Filed Jan. 15, 2013, effective July 30, 2013.*

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

12 CSR 10-104.040 Direct-Pay Agreements

PURPOSE: This rule explains how to qualify for and enter into a direct-pay agreement with the department pursuant to section 144.190.4, RSMo. A direct-pay agreement requires a taxpayer to accrue and pay tax on all its purchases directly to the department instead of the seller.

(1) In general, a purchaser making more than seven hundred fifty thousand dollars ($750,000) in annual purchases may enter into a direct-pay agreement with the department to accrue and pay taxes owed on all its purchases directly to the department instead of the seller.

(2) Basic Application.

(A) To obtain a direct-pay agreement, a purchaser must complete an application prescribed by the department and demonstrate with its records that it qualifies.

(B) In determining whether the purchaser has more than seven hundred fifty thousand dollars ($750,000) in annual purchases, only purchases of tangible personal property and taxable services that are not for resale are included.

(C) Upon approval of a direct-pay agreement, the department will issue a certificate that the purchaser must present to its sellers. Acceptance of this certificate relieves the seller from responsibility for collecting and remitting the tax.

(D) A direct-pay agreement remains in effect for five (5) years, unless the department or the taxpayer cancels the agreement. If the agreement is cancelled, the purchaser must notify each seller in writing that its certificate is no longer valid.

(E) A purchaser with a direct-pay agreement must accrue and pay all taxes based upon the purchaser's place of business. The purchaser must file returns and pay tax monthly. If filed and paid on a timely basis, the two percent (2%) payment discount will be allowed.

(3) Examples.

(A) A purchaser has been buying taxable supplies from a Missouri seller and the seller has been collecting and remitting sales tax. The purchaser enters into a direct-pay agreement with the department. The purchaser then provides a copy of its direct-pay certificate to the seller. The seller stops collecting sales tax on the purchaser's transactions. The purchaser must pay tax on these purchases directly to the department based upon the purchaser's place of business.

(B) A taxpayer has been granted a direct-pay exemption. The taxpayer makes five hundred thousand dollars ($500,000) in purchases for its place of business in St. Louis and seven hundred thousand dollars ($700,000) for its place of business in Branson. The taxpayer should file a direct-pay return and report the purchases at the St. Louis rate for the St. Louis purchases and at the Branson rate for the Branson purchases.

AUTHORITY: section 144.190.4, RSMo Supp. 2004. Original rule filed Dec. 1, 2004, effective July 30, 2005.*

**Original authority: 144.190, RSMo 1939, amended 1941, 1943, 1945, 1979, 1986, 1988, 1991, 1999, 2001, 2002, 2003.*