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Rebecca McDowell Cook  
**Secretary of State**

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March 31, 2000 April 14, 2000	May 1, 2000 May 15, 2000	May 31, 2000 May 31, 2000	June 30, 2000 June 30, 2000

Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule.

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## HOW TO CITE RULES AND RSMo

**RULES**—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 24, *Missouri Register*, page 27. The approved short form of citation is 24 MoReg 27.

The rules are cited in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

**RSMo**—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.

**U**nder this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

**E**ntirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

**A**n important function of the *Missouri Register* is to solicit and encourage public participation in the rule-making process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

**I**f an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least 30 days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than 30 days after publication of the notice in the *Missouri Register*.

**A**n agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the 90-day-count necessary for the filing of the order of rulemaking.

**I**f an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than 30 days from the date of publication of the new notice.

(A) Initial Application for Certificate by Examination Fee—  
1. All parts of exam \$[200.00] 240.00  
2. Per part \$ [50.00] 60.00

(B) Application for Reexamination Fee—  
1. All parts of exam \$[200.00] 240.00  
2. Per part \$ [50.00] 60.00

(C) Application for Certificate Without Examination Fee— \$ [200.00] 240.00

(3) All fees for subsections (1)(C) through (N) of this rule are nonrefundable and cannot be applied to another application. Fees for subsections (1)(A) and (B) of this rule are nonrefundable, and cannot be applied to another application except under extraordinary circumstances as determined by the board.

*AUTHORITY: section 326.200, RSMo [Supp. 1997] Supp. 1998. Emergency rule filed Aug. 6, 1981, effective Aug. 16, 1981, expired Dec. 10, 1981. Original rule filed Aug. 6, 1981, effective Dec. 11, 1981. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 29, 1999.*

*PUBLIC ENTITY COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE ENTITY COST: The private entity cost for this proposed amendment is estimated at \$203,640 per year for the life of this rule. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri State Board of Accountancy, Ken L. Bishop, Executive Director, P.O. Box 613, Jefferson City, MO 65102-0613. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

### Division 10—Missouri State Board of Accountancy Chapter 2—General Rules

#### PROPOSED AMENDMENT

**4 CSR 10-2.160 Fees.** The board is amending sections (1) and (3) of this rule.

*PURPOSE: The purpose of this amendment is to provide an exception to nonrefundable fees and fees applied to another application under extraordinary circumstances and to increase the amount of the certified public accountant's exam.*

(1) The following fees are established by the Missouri State Board of Accountancy:

## FISCAL NOTE PRIVATE ENTITY COST

### I. RULE NUMBER

**Title:** 4 CSR 10-2.160 Fees

**Division:** Division of Professional Registration/Missouri State Board of Accountancy

**Chapter:** Chapter 2 – General Rules

**Type of Rulemaking:** Proposed Amendment

**Rule Number and Name:** 4 CSR 10-2.160 Fees

### II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
3771	First Time Exam Applicants	\$150,840.00
4464	Retake Exam Applicants	\$44,640.00
204	Applicants for Certificate Without Examination Fee	\$8,160.00
<b>Entities Affected: 8,439</b>		<b>Fiscal Impact: \$203,640.00</b>

### III. WORKSHEET

First Time Examination Application Increase @ \$40.00

Retake Examination Application Fee Increase @ \$10.00

Applicants for Certificate Without Examination Fee Increase @ \$40.00

### IV. ASSUMPTIONS

The number of entities by class are based on actual figures from FY97 and FY98.

It is anticipated that the total aggregated cost per year will recur each year for the life of the rule.

**Title 5—DEPARTMENT OF ELEMENTARY AND  
SECONDARY EDUCATION  
Division 30—Division of School Services  
Chapter 345—Missouri School Improvement Program**

**PROPOSED RULE**

**5 CSR 30-345.020 Policies on Waiver of Regulations**

*PURPOSE: This rule establishes the criteria and procedures for annually identifying school district and/or school building eligibility for waivers in compliance with sections 161.210, 163.031.5(3), 160.545 and 160.518, RSMo. The student performance data will be reviewed, and the commissioner will notify districts if they are eligible for a waiver. Districts may respond to this notification by either accepting or rejecting such waiver. This rule contains four types of department-wide waivers of regulations which may be granted to school districts. Regulations identified in the Missouri School Improvement Program (MSIP) Waiver Plan will be waived in each of the four categories of waivers; however, the criteria for qualifying varies with each waiver. In all cases, the performance indicators will be evaluated on data in the same manner as in regular MSIP reviews (i.e., data from 1999–2000 will be used as the most current for districts being reviewed in 2000–2001).*

(1) Missouri School Improvement Program (MSIP) On-Site Review.

(A) Districts will qualify for a waiver of the next scheduled MSIP review if they meet the following:

1. The district, based upon department generated Annual Performance Reports (APR), meets the performance indicators at the accredited level (including at least two (2) of the indicators in Standard 16.1 and at least three (3) of the indicators in Standard 16.3 for K–12 districts or four (4) of five (5) performance indicators, two (2) from 16.1 and two (2) from 16.2 and 17.1 combined and having no dropouts for K–8 districts) for three (3) of the last four (4) years, including the second preceding year, based upon the annual Performance Scoring Guide. (In order for districts to have adequate time to prepare for the MSIP review, the decision on eligibility for waivers must be made by December of the second preceding year; therefore, the determination would be based upon the calls made during their last review and the succeeding three (3) APRs);

2. Districts having five percent (5%) or more in any identified ethnic minority must demonstrate equal or greater improvement in the minority achievement compared to the non-minority population on the Missouri Assessment Program (MAP). The following process will be used to judge this condition:

A. First, the three (3) MSIP grade spans will be examined to determine whether any grade span has five percent (5%) or more of any identified minority in each grade tested in that span for both the preceding and second preceding year;

B. Second, grade spans meeting the above condition will be examined to determine how many times the identified ethnic minority group equals or exceeds the improvement of the non-minority population on each test when comparing from the second preceding to the preceding year on both the upper two (2) levels (Proficient and Advanced combined) and the bottom two (2) levels (Step I and Progressing combined) for each test in that grade span; and

C. Third, at least sixty-two percent (62%) positive comparisons between the two (2) groups are required to be acceptable;

3. The district agrees to administer the MSIP Advance Questionnaire; and

4. The district completes an annual MSIP Waiver Plan which confirms the district's adherence to the specific laws and rules referred to in the checklist.

(B) If a district meets the criteria for a waiver of its regularly scheduled five (5)-year MSIP review, Department of Elementary and Secondary Education (DESE) will conduct a mini-team review which will focus on the areas identified in the MSIP Waiver Plan. The team will include the state supervisor and representatives from appropriate DESE sections.

(C) If the district meets the performance indicators at a level that would qualify for "Distinction" the year of their scheduled review, DESE will conduct a desk audit of the Resource Report. If the district meets all of the resource standards, a team will conduct an on-site visit which will focus on the district's documentation of its compliance with the items on the Waiver Plan.

(D) The MSIP waiver is an annual waiver and may be renewed for five (5) consecutive years if—

1. The district continues to meet the "Accredited" level on the performance indicators;
2. Complies with all the items on the MSIP Waiver Plan; and
3. Verifies that it has reviewed its Comprehensive School Improvement Plan (CSIP) and submits any revisions to DESE.

(E) If a district fails to meet the above criteria, the district will be notified by December 1 that a review is scheduled for the following year (i.e., If, based upon 1999–2000 data, a district is no longer qualified for an MSIP waiver, DESE will notify the district by December 1, 2000, that it is now scheduled for an MSIP review during the 2001–2002 school year). No other waiver can be used during that time period.

(2) Hold Harmless Districts.

(A) A district that meets the financial qualifications identified in section 163.031.5(3), RSMo will be granted waivers as long as the district qualifies for a waiver of the MSIP On-Site Review.

(3) A+ High School.

(A) The designation as an A+ high school is granted for one (1) year in compliance with the A+ rule and section 160.545, RSMo. A high school will qualify for a waiver of the MSIP on-site review if—

1. It is currently designated as A+;
2. Agrees to administer the MSIP Advance Questionnaire; and
3. Completes an annual A+ Waiver Plan which confirms the district's adherence to the specific laws and rules referred to in that plan.

(B) The A+ Waiver Plan is valid until June 30 of the year in which the high school is no longer designated as A+.

(4) Exemplary School.

(A) A school building that meets the following student performance criteria will be designated as Exemplary in compliance with section 160.518, RSMo, and will be granted waivers when the school meets the following:

1. The school has at least fifty percent (50%) of its students in the Proficient and Advance levels, combined, on the MAP and Reading Performance Indicators and has no more than twenty percent (20%) of its students in the Step 1 and Progressing levels of the MAP, combined;

2. Schools having five percent (5%) or more in any identified ethnic minority must demonstrate equal or greater improvement in each minority achievement compared to the non-minority population on the MAP. The following process will be used to judge this condition:

A. First, the three (3) MSIP grade spans will be examined to determine whether any grade span has five percent (5%) or more of any identified minority in each grade tested in that span for both the preceding and second preceding year;

B. Second, grade spans meeting the above condition will be examined to determine how many times the identified ethnic

minority group equals or exceeds the improvement of the non-minority population on each test when comparing from the second preceding to the preceding year on both the upper two (2) levels (Proficient and Advanced combined) and the bottom two (2) levels (Step 1 and Progressing combined) for each test in that grade span; and

C. Third, at least sixty-two percent (62%) positive comparisons between the two (2) groups are required to be acceptable;

3. The school meets all other MSIP Performance Indicators;

4. The school completes an annual MSIP Waiver Plan which confirms the district's adherence to the specific laws and rules referred to in the plan for all buildings within the district; and

5. The school agrees to administer the MSIP Advance Questionnaire.

(B) The building's exemplary designation will be valid until June 30 of the year in which the building is determined to not meet items in paragraph (4)(A)1.-4.

(5) Application. A district which meets the performance criteria for any of the four (4) waivers will be so notified by the commissioner. The district must either accept or decline the waiver by December 1 of the second preceding year prior to the year the district is scheduled for an MSIP review except that a district qualifying for an A+ waiver must accept or decline the waiver by October 1 of the year of the scheduled MSIP review (i.e., a waiver application for a scheduled 2001-2002 MSIP review must be filed by December 1, 1999).

(6) Missouri School Improvement Program Waiver Plan.

(A) School districts which meet certain student performance expectations may qualify for certain waivers related to the MSIP. The plan which is outlined below identifies the areas of MSIP which are eligible to be waived for qualifying districts.

1. All MSIP *Resource Standards and Indicators* will be waived except the following:

A. The state high school graduation requirements (MSIP 1.3);

B. Regular instruction in *United States and Missouri Constitutions*, as well as American History and Institutions, must be provided, and all students must pass at least a half unit of credit course in the institutions, branches, and functions of federal, state and local governments and in the electoral process, as required by section 170.011, RSMo (MSIP 1.3); and

C. All administrators and teachers must be certificated to teach in Missouri schools. "Appropriately certificated for their assignments" is waived under this provision, unless funding sources require specific certification. (MSIP 5.1).

2. All MSIP *Process Standards and Indicators* will be waived except the following:

A. Districts must have cross-referenced all curricular areas to the Show-Me Standards (MSIP 6.1A);

B. The district reports dropouts from school to the Missouri Literacy Hot Line (MSIP 8.1);

C. The district meets state and federal requirements for special education for students with disabilities, economically disadvantaged students, migratory children, students whose native or home language is other than English and homeless youth (MSIP 8.1B, C, D, E, F);

D. The district complies with all the regulations of the state and federal categorical programs in which the district participates (MSIP 8.7);

E. The district distributes a student code of conduct and provides a protected, orderly environment (MSIP 9.1C);

F. Professional development programs and services are provided as required by sections 168.400 and 160.530, RSMo (MSIP 12.1A);

G. Board of Education members must be trained as prescribed by section 162.203, RSMo (MSIP 13.2B);

H. The district complies with the salary compliance requirements of section 163.031, RSMo and with the minimum salary requirements as defined in section 163.172, RSMo. (MSIP 13.2B, 13.3C). Does not apply to "hold harmless" districts;

I. The district implements effective and efficient fiscal management systems that ensure accountability of district funds, and is not identified as a "financially stressed district" (MSIP 13.4A, B);

J. The district annually reviews its Comprehensive School Improvement Plan and updates it if necessary (MSIP 13.1C);

K. The district provides a safe physical environment for students (MSIP 14.2);

L. The district implements effective and efficient fiscal management systems that ensure accountability of district funds (MSIP 13.4A, B);

M. Cumulative health records, including immunizations as required by state law, are maintained and regularly updated for all students (MSIP 15.1); and

N. The district complies with all laws related to the transportation of students (MSIP 15.3).

3. No MSIP Performance Standards will be waived.

*AUTHORITY: sections 160.518 and 160.545, RSMo 1994, and 161.210, and 163.031.5(3), RSMo Supp. 1998. Original rule filed Sept. 30, 1999.*

*PUBLIC ENTITY COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE ENTITY COST: This proposed rule will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Elementary and Secondary Education, Carl Sitze, Interim Coordinator, Supervision Section, P.O. Box 480, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 5—DEPARTMENT OF ELEMENTARY AND  
SECONDARY EDUCATION  
Division 30—Division of School Services  
Chapter 345—Missouri School Improvement Program**

**PROPOSED RULE**

**5 CSR 30-345.030 Metropolitan School District Retired Teacher Program**

*PURPOSE: This rule outlines the criteria for application by a metropolitan school district to the Department of Elementary and Secondary Education for waivers to allow qualified retired teachers to teach in the metropolitan school district pursuant to section 105.269, RSMo Supp. 1999.*

(1) As used in this rule, unless specifically provided otherwise, the following terms shall be defined as follows:

(A) Metropolitan school district—any school district the boundaries of which are coterminous with the limits of any city which is not within a county; and

(B) Retired teacher—any retired teacher who taught in any metropolitan school district and who receives retirement benefits from the St. Louis Public Schools Retirement System.

(2) Any metropolitan school district may apply to the Department of Elementary and Secondary Education (DESE) for waivers to



allow retired teachers to teach in the metropolitan school district if the district has—

(A) Individuals working in a metropolitan school district who are employed by the state of Missouri and who participate in a volunteer tutoring program as authorized pursuant to section 105.268, RSMo Supp. 1999; and

(B) At least a five percent (5%) shortage of certified teachers to be determined by the metropolitan school district no later than August 1 of the school year in which a retired teacher as defined in this rule may be employed to teach.

(3) For the purpose of this rule, a position must be vacant as of August 1 prior to the beginning of the school year in order to be considered in the calculation of the teacher shortage.

(4) A retired teacher as defined in this rule may teach up to two (2) years in the metropolitan school district without losing his or her retirement benefits.

(5) The metropolitan school district shall place emphasis on hiring retired teachers to teach in areas that include, but are not limited to, reading improvement, which may include elementary remedial reading and the “Read to be Ready Program,” math, science, and special education.

*AUTHORITY:* section 105.269, RSMo Supp. 1999. Original rule filed Sept. 30, 1999.

*PUBLIC ENTITY COST:* This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

*PRIVATE ENTITY COST:* This proposed rule will not cost private entities more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Elementary and Secondary Education, Attention: Dr. Marilou Joyner, Assistant Commissioner, Division of School Services, P.O. Box 480, Jefferson City, MO 65102-0480. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 10—Air Conservation Commission**  
**Chapter 6—Air Quality Standards, Definitions,**  
**Sampling and Reference Methods and Air Pollution**  
**Control Regulations for the Entire State of Missouri**

**PROPOSED AMENDMENT**

**10 CSR 10-6.020 Definitions and Common Reference Tables.**  
The commission proposes to amend subsections (2)(B), (2)(C), (2)(H) and (2)(N). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule that is in the Missouri State Implementation Plan.

*PURPOSE:* This proposed amendment adds the new definition for criteria pollutant and hourly de minimis level as well as new language to the rules for determining creditability of emissions increases and decreases. The new regulatory language reflects the effort of the construction permit workgroup to streamline the permitting process. Also, this amendment will delete the definition for the St. Louis carbon monoxide nonattainment area since the area was redesignated to attainment this year.

(2) Definitions.

(B) All terms beginning with “B.”

1. Base year—The year chosen in the state implementation plan to directly correlate emissions of the nonattainment pollutant in the nonattainment area with ambient air quality data pertaining to the pollutant. From the base year, projections are made to determine when the area will attain and maintain the ambient air quality standards.

2. Baseline area—The continuous area in which the source constructs as well as those portions of the intrastate area which are not part of a nonattainment area and which would receive an air quality impact equal to or greater than one microgram per cubic meter (1  $\mu\text{g}/\text{m}^3$ ) annual average (established by modeling) for each pollutant for which an installation receives a permit under 10 CSR 10-6.060(8) and for which increments have been established in 10 CSR 10-6.060(11)/(B)/(A), Table 2/1. Each of these areas are references to the standard United States Geological Survey (USGS) County-Township-Range-Section system. The smallest unit of area for which a baseline date will be set is one (1) section (one (1) square mile).

*PUBLISHER’S NOTE:* Paragraphs (2)(B)3.-6. remain as published in the Code of State Regulations.

(C) All terms beginning with “C.”

*PUBLISHER’S NOTE:* Paragraphs (2)(C)1.-25. remain as published in the Code of State Regulations.

**26. Criteria pollutant—Air pollutants for which air quality standards have been established in 10 CSR 10-6.010.**

**[26.]27. Crude oil—**A naturally occurring mixture which consists of hydrocarbons and sulfur, nitrogen or oxygen derivatives, or a combination of these, of hydrocarbons which is a liquid at standard conditions.

**[27.]28. Custody transfer—**The transfer of produced crude oil or condensate, or both, after processing or treating, or both, in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

**[28.]29. Cutback asphalt—**Any asphaltic cement that has been liquefied by blending with VOC liquid diluents.

(H) All terms beginning with “H.”

1. Hazardous air pollutant—Any of the air pollutants listed in subsection (3)(C) of this rule.

2. HHV—A higher heating value as determined by 10 CSR 10-6.040(2) (ASTM Standard: D 2015-66, Part 19, 1972, Standard Method for Determining Gross Heating Values of Solid Fuels).

3. High efficiency particulate air filter— A HEPA filter found in respirators and vacuum systems capable of filtering three-tenths (0.3) micron particles with at least ninety-nine and ninety-seven hundredths percent (99.97%) efficiency.

4. High terrain—Any area having an elevation nine hundred feet (900’) or more above the base of the stack of the installation.

5. Homogeneous area—An area of surfacing material, thermal system insulation material or miscellaneous material that is uniform in color and texture.

6. Hot car—A vehicle which transfers hot coke from the oven to the area of quenching.

7. Hot well—The reservoir of a condensing unit receiving the warm condensate from the condenser.

**8. Hourly de minimis level—**The hourly equivalent of the annual de minimis level established in Table 1, subsection (3)(A) of this rule; calculated as the annual de minimis level divided by 8,760 and typically expressed in terms of pounds per hour.

(N) All terms beginning with “N.”

1. Nearby—Nearby as used in the definition GEP stack height in subparagraph (2)(G)2.B. is defined for a specific structure or terrain feature—

A. For purposes of applying the formula provided in subparagraph (2)(G)3.B., nearby means that distance up to five (5) times the lesser of the height or the width dimension of a structure, but not greater than one-half (1/2) mile; and

B. For conducting fluid modeling or field study demonstrations under subparagraph (2)(G)3.C., nearby means not greater than one-half (1/2) mile, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten (10) times the maximum height of the feature, not to exceed two (2) miles if feature achieves a height one-half (1/2) mile from the stack that is at least forty percent (40%) of the GEP stack height determined by the formula provided in subparagraph (2)(G)3.B. or twenty-six meters (26m), whichever is greater, as measured from the ground level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground level elevation at the base of the stack.

2. Net emissions increase—A condition when the increases in pollutant emissions at an installation exceed the decreases of the same pollutant.

A. In determining whether a net emission increase has occurred, all creditable increases and decreases of actual emissions shall be included occurring at the installation since the most recent permit was issued to the installation pursuant to 10 CSR 10-6.060(1)(C). If no permit has been issued to the installation, then all **creditable** increases and decreases shall be included occurring since—

(I) The base year inventory used to project attainment in the state implementation plan if the installation is in a nonattainment area and has the potential to annually emit one hundred (100) tons or more of the nonattainment pollutant; or

(II) The date on which the most recent permit was issued pursuant to 40 CFR 52.21, or August 7, 1977, for sulfur dioxide and particulate matter, or February 8, 1988, for nitrogen dioxide, whichever is more recent, if the installation is not subject to part (2)(N)2.A.(I).

B. Rules for determining creditability of increases and decreases.

(I) An increase or decrease in actual emissions is creditable only if the director has not relied on it in issuing a permit for the installation pursuant to 10 CSR 10-6.060(1)(C), which permit is in effect when the increase in actual emissions from the particular change occurs.

**(II) Increases or decreases in actual emissions are creditable only if they are contemporaneous with the increase from the particular change and only if it occurs between—**

**(a) The date five (5) years before construction on the particular change commences; and**

**(b) The date that the increase from the particular change occurs.**

**[(III)](III)** An increase or decrease in actual emissions of sulfur dioxide particulate matter or nitrogen oxides which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

**[(IV)](IV)** An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

**[(V)](V)** A decrease in actual emissions is creditable only to the extent that the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions; the decrease is enforceable at and after the time that actual construction to bring about the proposed increase begins; and the decrease has approximately the same qualitative significance for public health and welfare as that attributed to the proposed increase.

**[(VI)](VI)** If credit for a decrease in actual emissions has been banked in accordance with 10 CSR 10-6.060(12)(D), credit must be withdrawn from the bank in order for the decrease to be creditable.

**[(VII)](VII)** A decrease in actual emissions is creditable only if the director has not relied on it in demonstrating attainment or reasonable further progress.

C. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires a shakedown period becomes operational only after a reasonable shakedown period not to exceed one hundred eighty (180) days.

3. New tepee burner—One not in existence as of September 18, 1970.

4. NIOSH—National Institute of Occupational Safety and Health.

5. Nonattainment area—The areas of Missouri identified as follows:

A. A moderate nonattainment area for ozone consists of Franklin, Jefferson, St. Charles and St. Louis Counties and the City of St. Louis; **and**

B. Nonattainment areas for lead include the city of Herculaneum in Jefferson County, and the Dent, Liberty and Arcadia townships in Iron County; **and**].

*[C. A nonattainment area for carbon monoxide consists of the area within the boundaries of Interstate 270 and the Mississippi River in St. Louis City and County.]*

*AUTHORITY: sections 643.050 [ , RSMo Supp. 1997] and 643.055, RSMo [1994] Supp. 1998. Original rule filed Aug. 16, 1977, effective Feb. 11, 1978. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 22, 1999.*

*PUBLIC ENTITY COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE ENTITY COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.*

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:** A public hearing on this proposed amendment will begin at 9:00 a.m., December 9, 1999. The public hearing will be held at the Kansas City Downtown Marriott, 200 West 12th Street, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven days prior to the hearing to Roger D. Randolph, Director, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., December 16, 1999. Written comments shall be sent to Chief, Planning Section, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 10—Air Conservation Commission  
Chapter 6—Air Quality Standards, Definitions,  
Sampling and Reference Methods and Air Pollution  
Control Regulations for the Entire State of Missouri**

**PROPOSED AMENDMENT**

**10 CSR 10-6.065 Operating Permits.** The commission proposes to amend subsections (1)(B), (1)(D), (3)(D), (4)(J), and (4)(M);

and remove subsection (3)(E) and incorporate and renumber those paragraphs into subsection (3)(D). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan.

*PURPOSE: This amendment deletes the specified date from paragraph (1)(D)7. in order for the rule to be consistent with the U.S. Environmental Protection Agency rules on operating permits. Language and organizational clarifications are made to make it easier to understand and follow.*

(1) Definitions.

(B) Basic state installations are installations which meet any of the following criteria, but are not *[p]*Part 70 installations:

1. Emit or have the potential to emit any air pollutant in an amount greater than the *de minimis* levels;

2. Are, or are awaiting a decision by the administrator about whether they are, subject to a standard, limitation or other requirement under section 111 of the Act, including area sources subject to a standard, limitation or other requirement under section 111 of the Act;

3. Are, or are awaiting a decision by the administrator about whether they are, subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to rules or requirements under section 112(r) of the Act, including area sources subject to a standard or other requirement under section 112 of the Act, except that an area source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act.

(D) Part 70 installations are installations to which the *[p]*Part 70 operating permit requirements of this rule apply, in accordance with the following criteria:

*PUBLISHER'S NOTE: Paragraphs (1)(D)1.-5. remain as published in the Code of State Regulations.*

6. Any installation in a source category designated by the administrator as a *[p]*Part 70 source pursuant to 40 CFR 70.3; and

7. Installations that would be *[p]*Part 70 sources strictly due to the following criteria are not subject to *[p]*Part 70 source requirements *[until November 15, 1999, or]* until the administrator subjects this installation to these requirements by rule:

A. They are subject to a standard, limitation or other requirement under section 111 of the Act, including area sources; or

B. They are subject to a standard or other requirement under section 112 of the Act, except that a source, including an area source, is not required to obtain a permit solely because it is subject to rules or requirements under section 112(r) of the Act.

(3) Applicability.

(D) Exempt Installations and Emission Units. The following installations and emission units are exempt from the requirements of this rule *[unless they are subject to an applicable requirement]* unless such units are Part 70 installations or are located at Part 70 installations. Emissions from exempt installations and emission units shall be considered when determining if the installation is a *[p]*Part 70 installation:

*PUBLISHER'S NOTE: Paragraphs (3)(D)1.-12. remain as published in the Code of State Regulations.*

13. Recreational fireplaces; *[and]*

14. Stacks or vents to prevent the escape of sewer gases through plumbing traps for systems handling domestic sewage

only. Systems which include any industrial waste do not qualify for this exemption~~./.~~;

*[(E) Exempt Emission Units. The following emission units are exempt from the requirements of this rule. Emissions from exempt emission units shall be considered when determining if the installation is a part 70 installation:]*

*[1.]15.* Combustion equipment that—

A. Emits only combustion products;

B. Produces less than one hundred fifty (150) pounds per day of any air contaminant; and

C. *[With]* Has a maximum rated capacity of—

(I) Less than ten (10) million British thermal units *[(BTUS)] Btus* per hour heat input by using exclusively natural or liquefied petroleum gas, or any combination of these; or

(II) Less than one (1) million *[(BTUS)] Btus* per hour heat input;

*[2.]16.* Office and commercial buildings, where emissions result solely from space *[heating by]* heaters using natural gas or liquefied petroleum gas with a maximum rated capacity of less than twenty (20) million *[(BTUS)] Btus* per hour heat input. Incinerators operated in conjunction with these sources are not exempt;

*[3.]17.* Any country grain elevator that never handles more than one million two hundred thirty-eight thousand six hundred fifty-seven (1,238,657) bushels of grain during any twelve (12)-month period and is not located within an incorporated area with a population of fifty thousand (50,000) or more. A country grain elevator is defined as a grain elevator that receives more than fifty percent (50%) of its grain from producers in the immediate vicinity during the harvest season. This exemption does not include grain terminals which are defined as grain elevators that receive grain primarily from other grain elevators. To qualify for this exemption the owner or operator of the facility shall retain monthly records of grain origin and bushels of grain received, processed and stored for a minimum of five (5) years to verify the exemption requirements. Monthly records must be tabulated within seven (7) days of the end of the month. Tabulated monthly records shall be made available immediately to Missouri Department of Natural Resources representatives for an announced inspection or within three (3) hours for an unannounced visit;

*[4.]18.* Restaurants and other retail establishments for the purpose of preparing food for employee and guest consumption; and

*[5.]19.* Sand and gravel operations that have a maximum capacity to produce less than seventeen and one-half (17.5) tons of product per hour and use only natural gas as fuel when drying.

(4) Basic State Operating Permits.

(J) Operating Permit Period. Each operating permit *[accepted by the permitting authority]* under this section shall be effective for a period of five (5) years. The permit term shall commence on the date of receipt or acceptance, whichever is later.

(M) State Enforcement. All terms of an *[accepted]* operating permit shall be enforceable by the permitting authority. The permitting authority is authorized, for enforcement purposes, to enter and inspect basic state installations at reasonable times and upon the presentation of proper credentials. The owner or operator will provide the representative of the permitting authority the stamped "Received" or *[accepted]* copy of the operating permit notification upon entry.

*AUTHORITY: section 643.050, RSMo [Supp. 1997] Supp. 1998. Original rule filed Sept. 2, 1993, effective May 9, 1994. Amended: Filed June 5, 1995, effective Jan. 30, 1996. Amended: Filed Oct. 3, 1995, effective June 30, 1996. Amended: Filed Aug. 14, 1997, effective April 30, 1998. Amended: Filed Sept. 22, 1999.*

*PUBLIC ENTITY COST:* This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

*PRIVATE ENTITY COST:* This proposed amendment will not cost private entities more than \$500 in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:* A public hearing on this proposed amendment will begin at 9:00 a.m., December 9, 1999. The public hearing will be held at the Kansas City Downtown Marriott, 200 West 12th Street, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven days prior to the hearing to Roger D. Randolph, Director, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., December 16, 1999. Written comments shall be sent to Chief, Planning Section, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 2—Income Tax**

**PROPOSED AMENDMENT**

**12 CSR 10-2.240 Determination of Timeliness.** The department proposes to add new sections (7) and (8), and renumber the existing sections.

*PURPOSE:* This amendment permits the use of a private delivery service and indicates what constitutes timely mailing by such service.

**(7) Any return, document or payment may be delivered by a private delivery service (PDS) to meet the timely mailing as timely filing/paying rule. Such PDS must be a properly designated PDS by the Internal Revenue Service (IRS) at the time the return, document or payment is delivered. Refer to IRS rules to determine the designated PDS. The IRS publishes a list in March and September of each year. PDSs cannot deliver items to P.O. boxes. The United States Postal Services must be used to mail any return, document or payment to Missouri Department of Revenue P.O. box address.**

**(8) The PDS is required to either—1) record electronically to its database (kept in the regular course of its business) the date on which an item was given to the PDS for delivery; or 2) mark on the cover of the item the date on which an item was given to the PDS for delivery. The date recorded or the date marked under this regulation is treated as the postmark date for purposes of section 143.851, RSMo.**

*[(7)]* **(9)** If any date, including any extension of time for performing any act, falls on a Saturday, Sunday or a legal holiday in this state, the performance of the act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

*[(8)]* **(10)** Example: Joe Jones, a Missouri taxpayer has a document that must be filed with the Department of Revenue on or before August 1, 1993. For that document to be considered timely, he must do one (1) of the following:

(A) Deposit the document with the United States Postal Service early enough that the United States postmark stamped on the envelope will be August 1, 1993 or earlier;

(B) Take the document to the United States Postal Office and have it registered by a postal employee on or before August 1, 1993; or

(C) Present the document in a certified envelope with return receipt requested to a United States postal employee and ask the postal employee to postmark the item on or before August 1, 1993.

*AUTHORITY:* sections 136.120 and 143.961, RSMo 1994. Original rule filed March 1, 1993, effective Oct. 10, 1993. Amended: Filed Sept. 29, 1999.

*PUBLIC ENTITY COST:* This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

*PRIVATE ENTITY COST:* This proposed amendment will not cost private entities more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to the proposed amendment with the Department of Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 111—Sales/Use Tax**

**PROPOSED RULE**

**12 CSR 10-111.013 Drugs and Medical Equipment**

*PURPOSE:* Section 144.030.2(18), RSMo, provides an exemption for prescription drugs, orthopedic and prosthetic devices, numerous dental items, hearing aids, hearing aid supplies and certain sales of over-the-counter drugs. This rule explains the sales tax law as it applies to these exemptions.

(1) In general, sales of prescription drugs, orthopedic and prosthetic devices and certain qualifying health-related equipment, and certain sales of over-the-counter drugs, are exempt from Missouri sales tax.

(2) Definition of Terms.

(A) Orthopedic device—a rigid or semi-rigid leg, arm, back or neck brace and casting materials which are directly used for the purpose of supporting a weak or deformed body member or restricting or eliminating motion in a diseased or injured part of the body.

(B) Over-the-counter drug—a drug product which may be purchased without a physician's prescription.

(C) Prescription drug—a drug dispensed by a licensed pharmacist only upon a lawful prescription from a licensed practitioner.

(D) Prosthetic device—a device that replaces all or part of the function of a permanently inoperative or malfunctioning internal body organ and is medically required.

(3) Basic Application of Tax.

(A) Sales of prescription drugs, insulin, medical grade oxygen, drug samples and materials used to manufacture samples, which may be dispensed by a licensed practitioner are exempt from tax. Sales of over-the-counter drugs when sold to an individual with a disability or to the individual's agent are exempt from tax. When selling over-the-counter drugs to an individual with disability, the retailer should obtain a purchaser's signed statement of disability. The retailer should retain these statements for three (3) years. The

statement should include the purchaser's name, type of purchase and amount of purchase, and be signed by the purchaser or the purchaser's agent. The retailer should request a form of identification, such as driver's license, credit card, etc. to verify the identity of the purchaser. Sales of prosthetic devices as defined on January 1, 1980, by the Federal Medicare Program under Title XVIII of the Social Security Act of 1965 are exempt from tax.

(B) Sales of orthopedic devices as defined by the Federal Medicare Program under Title XVIII of the Social Security Act of 1965 are exempt from tax.

(C) Also exempt from sales tax are items specified in section 1862(A)(12) of the Social Security Act of 1965. Exempt items included in this class are those used in connection with the treatment, removal or replacement of teeth or structures directly supporting teeth. Dental equipment or supplies are not exempt.

(D) Sales of other specific health-related equipment and accessories are exempt from sales tax.

1. These specific items are—

- A. Ambulatory aides
- B. Braille writers
- C. Electronic Braille equipment
- D. Home respiratory equipment and accessories
- E. Hospital beds and accessories
- F. Stairway lifts
- G. Wheelchairs, manual and powered

2. If purchased by or on behalf of a person with one or more physical or mental disabilities to enable them to function more independently, the following items are also exempt:

- A. Electronic print enlargers and magnifiers
- B. Electronic alternative and augmentative communication devices
- C. Items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities
- D. Reading machines
- E. Scooters

(4) Examples.

(A) A retailer sells an over-the-counter drug to an individual claiming a disability. The sale is exempt if the retailer obtains from the purchaser a statement similar to the following:

Purchases of over-the-counter drugs by individuals with disabilities are exempt from sales tax. IT IS UNLAWFUL TO FRAUDULENTLY CLAIM AN EXEMPTION. I CERTIFY THAT I HAVE A DISABILITY AND AM ENTITLED TO CLAIM THIS EXEMPTION.

Type of Purchase \_\_\_\_\_ Amount \_\_\_\_\_  
Type of ID \_\_\_\_\_  
ID Number \_\_\_\_\_  
Name (print) \_\_\_\_\_  
Signature \_\_\_\_\_

(B) Examples of exempt prosthetic devices include:

- 1. Breast prosthetics, including surgical brassieres for post-mastectomy patients
- 2. Cardiac pacemakers
- 3. Colostomy and other ostomy bags and the necessary equipment required for attachment
- 4. Electronic speech aids if the patient has had a laryngectomy or his/her larynx is permanently inoperative
- 5. Hearing aids and hearing aid supplies
- 6. Hemodialysis equipment
- 7. Maxillofacial devices and devices which replace all or part of the ear or nose
- 8. Prosthetic lenses which replace the lens of an eye

9. Urinary collection systems, including Foley catheters, when replacing bladder function in cases of permanent urinary incontinence

10. Eyeglasses, contact lenses, bedpans and incontinent apparel are not considered prosthetic devices and are subject to sales tax

(C) Examples of exempt orthopedic devices include:

- 1. Artificial legs, arms and eyes including terminal devices such as artificial hands
- 2. Hoods and space shoes which replace part of a foot
- 3. Orthotics
- 4. Stump stockings and harnesses when they are essential to the effective use of an artificial limb
- 5. Trusses
- 6. Elastic braces, elastic stockings, arm slings, elastic wraps and garter belts, are not considered orthopedic devices and are subject to sales tax

(D) Examples of exempt orthopedic and prosthetic devices used in dentistry include:

- 1. Restorative materials.
  - A. Acrylics
  - B. Aluminum crowns
  - C. Amalgam
  - D. Bases and liners
  - E. Cements
  - F. Chrome steel crowns
  - G. Copper bands
  - H. Crown forms
  - I. Dentin enamel adhesives
  - J. Denture anchors
  - K. Denture repair materials
  - L. Denture teeth
  - M. Gold
  - N. Mercury
  - O. Pins
  - P. Pit and fissure sealants
  - Q. Porcelains
  - R. Posts
  - S. Temporary filling materials
  - T. Zinc oxide (Eugenol)
- 2. Prosthetic devices and supportive materials.
  - A. Acrylics
  - B. Bonding materials
  - C. Chrome alloys
  - D. Composed materials
  - E. Denture anchors
  - F. Denture repair materials
  - G. Denture teeth
  - H. Implant materials
  - I. Metal alloys
- 3. Orthodontic devices and materials.
  - A. Arch bar splits
  - B. Bone grafting materials
  - C. Cresitine
  - D. Endodontic materials
  - E. Face bow head gear
  - F. Gor-tex grafting materials
  - G. Gutta percha points
  - H. Muscosal grafts (natural and artificial)
  - I. Orthodontic appliances
  - J. Orthodontic brackets
  - K. Orthodontic elastics
  - L. Orthodontic expansion screw
  - M. Orthodontic resins
  - N. Orthodontic separators
  - O. Orthodontic waxes
  - P. Orthodontic wires
  - Q. Root canal sealants

- R. Silver points
- S. Surgical wires

(E) Sales of other specific health-related equipment and accessories are exempt from sales tax.

1. These specific items are—

- A. Ambulatory aides
- B. Braille writers
- C. Electronic Braille equipment
- D. Hospital beds and accessories
- E. Home respiratory equipment and accessories
- F. Stairway lifts
- G. Wheelchairs, manual and powered

2. If purchased by or on behalf of a person with one (1) or more physical or mental disabilities to enable them to function more independently, the following items are also exempt:

- A. Electronic alternative and augmentative communication devices
- B. Electronic print enlargers and magnifiers
- C. Items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities
- D. Reading machines
- E. Scooters

*AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 29, 1999.*

*PUBLIC ENTITY COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE ENTITY COST: This proposed rule will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 111—Sales/Use Tax**

**PROPOSED RULE**

**12 CSR 10-111.016 Refunds and Credits**

*PURPOSE: Section 144.190, RSMo permits a taxpayer to file a claim for refund of an overpayment of sales or use taxes resulting from a mistake of fact or law. Section 144.100, RSMo requires a taxpayer to file an amended return to correct an error or omission on a return. Section 144.746, RSMo allows the taxpayer and the department to extend by agreement the time to file a claim for refund. Section 144.030.2(23), RSMo establishes special refund procedures for purchasers of domestic utilities under a non-domestic utility rate classification. This rule explains requirements for obtaining a refund or credit on overpayment of sales and use taxes.*

(1) In general, if a taxpayer has overpaid tax, the taxpayer may file a claim for a refund with the department.

(2) Basic Application of Tax.

(A) A taxpayer may file a claim for a refund within three (3) years after the date of an overpayment. The date of the overpayment is the due date of the original return or the date paid whichever is later. The department will not consider a claim unless it is filed within the three (3)-year period. Every claim must be in

writing under oath, and must state the specific grounds upon which the claim is founded. If the overpayment is due to an error or omission in a previously filed return, the claim must be accompanied by an amended return for each period in which the tax was originally reported. If the error or omission is corrected in the return immediately following the filing period in which the error or omission occurred, no amended return or claim for refund is required.

(B) The person requesting the refund or credit must be the person who is legally obligated to remit the tax to the Department of Revenue. If a taxpayer erroneously pays sales tax to a vendor, the taxpayer should seek a refund from that vendor. Vendors may file a claim on behalf of the purchaser by submitting a claim for refund and amended returns for the period(s) in which the tax was erroneously remitted.

(C) The department will issue a statement approving the credit in the amount of the overpayment instead of a refund if the taxpayer requests a credit on the claim. The credit may be applied to any subsequent tax liability by attaching the approved credit authorization form to the return to which the credit is being applied. In no case, however, should a person take a credit for any overpayment of tax unless prior approval has been obtained from the department. If it is determined later that the person will incur no future liability, for example the business is closed, the credit may be returned to the department for a refund.

(D) If a sale is rescinded, no amended return or claim for refund is required. The seller may adjust its gross receipts on its next filed return. However, the adjustment may not exceed the gross receipts for the filing period.

(E) Interest is paid on all refunds at a rate established pursuant to section 32.057, RSMo. Interest does not apply to a credit.

(F) No refunds will be granted for illegally or erroneously overcharged or overcollected sales tax incident to credit card discounts, imposition of sales tax by the retailer upon amounts representing cigarette tax imposed under Chapter 149, RSMo, or imposition of sales tax by the retailer upon amounts representing tax on sales of beer, liquor or wine under Chapter 311, RSMo.

(G) The department may recover any refund or credit erroneously made or allowed in an action against the person legally obligated to remit the tax.

(H) A person making taxable, non-domestic purchases of utility services and using any portion of the services for nontaxable domestic use may apply for a credit or refund on the domestic use portion of the purchase. In addition, a person making domestic purchases of utility services on behalf of occupants of residential apartments, condominiums and nursing homes through a single or master meter, may also apply for a credit or refund on the domestic use portion of the purchase. Domestic use includes common areas and facilities as well as vacant units. The claim for refund must be filed between the first day of the first month and the fifteenth day of the fourth month following the year of purchase.

(I) Alternatively, the purchaser of nontaxable, domestic use utility services may request the utility company to apply for a refund on the domestic portion of its utility purchases. The utility company, as the seller of utilities, has three (3) years from the due date of its return for the period in which the domestic utilities were sold to file a claim for refund on behalf of the purchaser.

(J) The taxpayer and the department may extend by agreement the period allowed for filing a claim for refund. However, such an agreement is allowed only if the time for filing a claim for refund has not yet expired.

(3) Examples.

(A) A vendor collects tax on a sale to a customer that takes place in August and reports it on its August sales tax return. In October, that customer presents a valid exemption certificate for the August sale. To claim a refund, the vendor must complete a

notarized claim for refund and submit it with a copy of the invoice, the customer's exemption certificate and an amended August return.

(B) A carpet vendor determines that in the past three (3) years it has been collecting and remitting sales tax on carpet sales in which it is also installing the carpet in homes and businesses. The vendor purchases its carpet from a wholesaler located outside of the state. Therefore, the carpet vendor should have been paying use tax on its purchases of the carpet from its wholesaler and selling its carpet without charging sales tax on its installation sales. The vendor should complete amended sales tax returns for each period during the three (3) years and amended use tax returns for each period during the three (3) years. If the amended returns result in an overpayment, the carpet vendor may claim a refund by completing a refund application.

(C) A computer store sells a computer to a customer and reports the tax on its May sales tax return. In July the customer returns the computer for a full refund. Because the May sales tax has been remitted to the department the computer store adjusts its gross receipts for July. If the adjustment exceeds its July gross receipts, the computer store must submit an application for refund and an amended return for May.

(D) A manufacturer discovers it paid tax on its purchase of a piece of equipment that qualified for an expanded plant exemption. The manufacturer purchased the equipment from an equipment supply company who reported the tax to the department. The supply company must request the refund from the department on behalf of the manufacturer by submitting a refund application, the manufacturer's exemption certificate and an invoice of the sale.

(E) In March 1999, a taxpayer discovers it paid tax on a January 1996 sale for which it has an exemption certificate. The taxpayer submits a refund application for the exempt sale. Because the due date of the original January 1996 return was February 20, 1996, the refund application will be denied because it is not within the three (3)-year statute of limitations.

(F) In 1997, an apartment complex under a non-domestic rate classification pays the water bill, including sales tax, to the utility company for the entire complex. The apartment complex may file a claim for refund on its 1997 purchases of water prior to April 15, 1998.

(G) A nursing home that is under a non-domestic rate classification pays for the electricity, including tax for the entire facility in 1996, 1997 and 1998. The electric company may file a claim for refund on behalf of the nursing home in January 1999, as long as it is filed within three (3) years of the due date of the earliest return.

(H) The department begins an audit on a taxpayer on June 1, 1999, that will cover the tax periods May 1996 through May 1999. The department and the taxpayer may enter into an agreement to extend the period for issuing an assessment and for filing a claim for refund for a specified period of time. The agreement must be made before the original expiration date for issuing the assessment or claiming the refund and may be extended by subsequent agreements.

*AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 29, 1999.*

*PUBLIC ENTITY COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE ENTITY COST: This proposed rule will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, Office of Legislation and Regulations,*

*P.O. Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.*