CSR

Rules of
Department of Revenue
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
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12 CSR 10-103.200 Isolated or Occasional Sale

PURPOSE: Section 144.020.1(1), RSMo, imposes a tax on sellers engaged in the business of selling tangible personal property or rendering taxable service at retail. Section 144.010.1(2), RSMo, excludes certain isolated or occasional sales from tax. This rule explains when a sale is a nontaxable, isolated or occasional sale.

(1) In general, sales of tangible personal property are subject to tax only if the taxpayer is engaged in the business of making such sales. Isolated or occasional sales by a person not engaged in the business generally are not taxable. There are exceptions to this rule based on the frequency of such sales and total dollars of annual sales.

(2) Definition of Terms.

(A) Business—any activity engaged in by a person, or caused to be engaged in by the person, with the object of direct or indirect gain, benefit, or advantage.

(B) Nonbusiness enterprise—any activity engaged in by a person that is not part of the person's business.

(C) Person—any individual or group acting as a unit.

(3) Basic Application.

(A) Isolated or occasional sales of tangible personal property made by persons not engaged in the business of selling such property are not subject to tax if the gross receipts from all such sales are less than three thousand dollars ($3,000) in a calendar year.

(B) Factors which are considered in deciding if a taxpayer is engaged in business include, but are not limited to, the following criteria:

1. Holding out as being engaged in business by the seller, such as advertising in telephone books, media advertising, solicitation, etc.;

2. Frequency and duration of sales; and

3. The nature of the market for the service or property sold or leased.

(C) If annual sales exceed three thousand dollars ($3,000) in a calendar year, such sales will not be considered isolated or occasional, even though the taxpayer is not regularly engaged in the business of selling such products.

(D) Sales made in the partial or complete liquidation of a household, farm, or nonbusiness enterprise are not included in the three thousand dollars ($3,000) threshold. These sales are not taxable.

(4) Examples.

(A) A grocery store sells a used cash register for $1,000. No other non-inventory items are sold during the year. This would qualify as an isolated or occasional sale, and would not be subject to tax.

(B) Same facts as in (A), except that the taxpayer sells used cash registers and fixtures that total $4,000 during the calendar year. The taxpayer replaces these cash registers and fixtures by purchasing new models. The total $4,000 of these sales is subject to tax.

(C) Same facts as in (B), except that the taxpayer does not replace the cash registers or fixtures. This would qualify as a partial liquidation of a nonbusiness enterprise. Therefore, the sales are not subject to tax even though the gross receipts exceed $3,000 in a calendar year.

(D) A barbershop sells tangible personal property (shampoo, combs, etc.) as a regular part of its ongoing business. These sales are subject to sales tax even if the gross receipts are less than $3,000 in a calendar year.

(E) A construction company buys new equipment every few years, and sells its used equipment to other construction businesses. Gross receipts from these sales exceed $3,000 in a calendar year. The construction company is required to collect tax on the sale of the used equipment.

(F) A homeowner holds a weekend garage sale once a year. As long as the property was not created with the intent to sell or purchased for resale, the sale of the merchandise is not subject to tax because the garage sale qualifies as a partial liquidation of a household.

(G) A person regularly attends garage sales. He buys merchandise that he intends to sell at his monthly garage sales. The gross receipts from his garage sales are taxable even if they do not exceed $3,000 because he is in the business of operating garage sales.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 3, 2000, effective July 30, 2000.*

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

*In **Staley v. Missouri Director of Revenue**, 623 SW2d 246 (Mo. Banc 1981) a partnership contracted to sell all furnishings in a one time liquidation sale. The court found that since Section 144.020 provided that "business" and "isolated and occasional sale" are separate terms, no tax is due on isolated or occasional liquidation sales by parties not engaged in the business of selling such items.*

12 CSR 10-103.210 Auctioneers and Other Agents Selling Tangible Personal Property

PURPOSE: This rule interprets the sales and use tax law as it applies to sales of tangible personal property when an auctioneer or other agent is involved in the sale.

(1) In general, an auctioneer who does not disclose the principal will be considered the seller of the tangible personal property and will be required to collect and remit sales tax on the gross receipts of the property sold. The principal is liable for collecting and remitting the tax if the auctioneer discloses the principal to the purchasers at the auction. An organization exempt from tax on its sales (see 12 CSR 10-110.955) acting as an agent to sell tangible personal property to raise funds for the exempt organization is not required to collect and remit tax; the principal must collect and remit the tax. All other agents selling tangible personal property, by consignment or otherwise, must collect and remit tax even if the principal is disclosed.

(2) Definition of Terms.

(A) Agent—a person who acts on behalf of a principal.

(B) Auctioneer—an agent licensed as an auctioneer who sells tangible personal property belonging to another at public or private auction and who receives compensation for conducting the sale.

(C) Principal—a person who empowers another to act on his/her behalf.

(3) Basic Application of Tax.

(A) The principal is liable for collecting and remitting the tax if the auctioneer discloses the principal to the purchasers at the auction. An auctioneer may disclose the principal by written or oral communication to the purchasers.

(B) Tangible personal property sold at public or private auction in the course of the partial or complete liquidation of a household, farm or non-business enterprise is not subject to tax. See 12 CSR 10-103.200.

(C) Tangible personal property, except inventory of the seller, sold at public or private auction in the course of a liquidation of a business is not subject to tax. The sale of inventory is subject to tax.

(4) Examples.

(A) An auctioneer conducts a weekly auction in which the auctioneer sells various items obtained from numerous undisclosed principals. The auctioneer must collect and remit sales tax on these sales.

(B) An auctioneer conducts an auction on behalf of a disclosed principal. The principal is responsible for collecting and remitting the sales tax on the sales.

(C) A retired farmer contracts with an auctioneer to sell the assets of the family farm. The receipts from these sales are not subject to tax because the assets are sold in the course of a partial or complete liquidation of a household, farm or non-business enterprise.

(D) A grocery store is going out of business and contracts with an auctioneer to sell the fixtures and inventory of the store. The sales of the cash registers, display counters and refrigeration equipment are not subject to sales tax as a liquidation of a business. The sales of inventory items such as groceries are subject to sales tax.

(E) An antique store sells some goods on consignment from the owners. The store agrees with the owners to split the proceeds of the sale, 60% to the owner and 40% to the store. The store must collect and remit tax on the entire sale price even if it discloses the owners of the consigned goods.

(F) An art gallery sells works by artists for a commission. The gallery must collect and remit tax on the entire sale price even though the artists are disclosed.

(G) A parent teacher organization (PTO) agrees with a candy company to sell candy as a fundraiser for a public elementary school. The PTO buys the candy from the company and has the right to return any unsold candy over the minimum agreed amount. The sale is not subject to tax because the PTO is the seller of the candy and its sales are exempt from tax as sales by a public elementary school.

(H) A parent teacher organization agrees with a wrapping paper company to sell wrapping paper as a fundraiser for a public elementary school. The PTO takes orders for the wrapping paper and forwards the orders to the company. The PTO never takes title to the wrapping paper—it merely takes the orders and delivers the paper. The company must collect and remit tax because the company is the seller of the wrapping paper.

AUTHORITY: section 144.270, RSMo 2000. Original rule filed Sept. 9, 2004, effective March 30, 2005.*

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

12 CSR 10-103.220 Resale

PURPOSE: This rule interprets the resale exemption in section 144.615(6), RSMo, and the resale exclusion in section 144.010.1(9), RSMo.

(1) In general, purchases of tangible personal property or taxable services are not subject to sales or use tax if purchased for ultimate sale at retail.

(2) Definition of Terms.

(A) Purchase for resale—a purchase for ultimate sale at retail.

(B) Sale—any transfer of title or ownership to tangible personal property or rendering of taxable service for consideration.

(C) Sale at retail—a sale of tangible personal property or services for use or consumption by the purchaser that is taxable under section 144.020, RSMo.

(3) Basic Application of Tax.

(A) A taxpayer may purchase tangible personal property or taxable services for resale if the purchase is for subsequent sale at retail. Purchases of tangible personal property or taxable services that are not subsequently transferred in transactions that constitute sales at retail are taxable at the time of purchase.

(B) When tangible personal property is given away, tax must be paid at the time of purchase, unless there is a bargained for exchange between the seller and buyer and a direct quantitative connection between the giveaway and actual sales at retail.

(C) The purchase of tangible personal property resold as real property or incidental to the rendering of a nontaxable service is taxable.

(D) If a purchaser makes more than a nominal use of the tangible personal property before the resale takes place, the purchase is subject to tax.

(4) Examples.

(A) A grocery store purchases bread and other food items from a wholesaler. Because the food items will be resold, the grocery store may purchase them without paying tax.

(B) A grocery store purchases grocery bags. The grocery bags are provided only to customers who purchase merchandise. The grocery bags can be purchased exempt from tax because they are transferred to the customer as part of the sale of the merchandise.

(C) An appliance store purchases a refrigerator for its own use. Tax is due on the purchase of the refrigerator even if the refrigerator is ultimately sold at retail after its use.

(D) A taxpayer selling building materials purchases boxes and other packaging materials. These purchases are used to ship its products to its customers. The boxes and other packaging materials can be purchased exempt from tax as a purchase for resale.

(E) A taxpayer sells custom software. The taxpayer's purchases of compact discs and related packaging materials are subject to tax because custom software is the sale of a nontaxable service. Consequently, the compact discs and packing materials do not qualify as purchases for resale.

(F) A taxpayer purchases boxes to store merchandise within the taxpayer's warehouse. The boxes are not shipped to a customer. The purchase of the boxes is subject to tax.

(G) A business advertises a buy one, get one free sale. The business does not have to pay tax at the time of purchase of the "free" item because it is subsequently resold as part of the sales transaction.

(H) A professional baseball team gives promotional baseballs to the first 10,000 customers. The team should not pay tax on the purchase of the baseballs because tax is collected and remitted on the sale of the tickets.

AUTHORITY: sections 144.010(9) and 144.615(6), RSMo Supp. 2004 and 144.150, 144.270 and 144.705, RSMo 2000. Original rule filed Sept. 27, 2000, effective March 30, 2001. Amended: Filed Aug. 26, 2005, effective Feb. 28, 2006.*

**Original authority: 144.010, RSMo 1939, amended 1941, 1943, 1945, 1947, 1974, 1975, 1977, 1978, 1979, 1981, 1985, 1988, 1993, 1996, 1998, 1999, 2001; 144.150, RSMo 1939, 1941, 1943, 1945, 1961, 1987, 1990, 1994; 144.270, RSMo 1939, amended 1941, 1943, 1947, 1955, 1961; 144.615, RSMo 1959, amended 1961, 1985, 1986, 2003, 2004; and 144.705, RSMo 1959.*

Kansas City Power & Light Co. v. Director of Revenue, *83 S.W.3d 548 (Mo. banc 2002). The taxpayer claimed a resale exemption for electricity purchased by hotels for use in guest rooms. The Court held that the hotels transferred the right to control the electricity when the guest was able to adjust the temperature. The guests pay consideration for that right when they pay for the hotel room because the cost of the electricity is "factored into" the cost of the room. Therefore, the sales of electricity to the hotels for use in the guest rooms were not subject to tax. The Court also affirmed the Administrative Hearing Commission's calculation of the refund due based on a square footage analysis as "the best method available on the record before it." The Court recognized, however, that there were substantial questions regarding whether such a measure would* *withstand scrutiny on a more complete record "in a future case."*

Kansas City Royals Baseball Corp. v. Director of Revenue, *32 S.W.3d 560 (Mo. banc 2000). The taxpayer claimed a resale exemption for promotional items distributed to its paying customers at its baseball games. The promotional items were also given away to attendees who had complimentary tickets and if items were left after a game, people received them without paying any admission at all. The Court found that consideration was paid for the promotional items because the cost of the items was "factored into" the price of the tickets to see the game. The Court stated: "there is a direct connection between the ticket price charged the paid attendees who received the promotional items and the promotional items themselves."*

Westwood Country Club v. Director of Revenue*, 6 S.W.3d 885 (Mo. banc 1999), determined that meals and beverages served by Westwood, a private club not open to the public, were not sales at retail. Westwood could not claim a resale exemption on its purchases of food and beverages. The Court also found that Westwood did not owe sales tax on fees that it charged for use of its golf carts because it paid sales tax on its purchases of the golf carts.*

Aladdin's Castle, Inc. v. Director of Revenue*, 916 S.W.2d 196 (Mo. banc 1996), dealt with the taxation of prizes awarded to customers playing arcade games. Aladdin collected and remitted sales tax on tokens purchased by customers to play the arcade games. Aladdin purchased the prizes for resale and did not pay a tax. The Court found that Aladdin met the three factors set forth in* ***Sipco, Inc. v. Director of Revenue*** *and did not have to show that the cost of the prizes was specifically factored into the price of the sale of tokens to each customer to take advantage of the resale exemption.*

In ***Sipco, Inc. v. Director of Revenue****, 875 S.W.2d 539 (Mo. banc 1994), the issue was whether dry ice used to package fresh pork products for transport to customers was exempt as a purchase for resale. The court held that the seller need not show the cost is specifically factored into the price of the goods in order to claim a resale exemption. The Court stated that "one need not be an accountant to understand that the value of the dry ice was factored into the total consideration paid for the pork."*

In ***Spudich v. Director of Revenue****, 745 S.W.2d 677 (Mo. banc 1988), a taxpayer purchased billiard tables for display and possible resale. The Supreme Court held that the exemption for resale was available only for items purchased solely for resale. The billiard tables in question were purchased primarily as display items to solicit orders. Any resale of the tables was incidental to their primary purpose. Resale only occurred if that particular table was the last of its kind in inventory or a customer wanted that specific table. The Court held the taxpayer's purchases subject to use tax.*

R & M Enterprises v. Director of Revenue*, 748 S.W.2d 171 (Mo. banc 1988), dealt with the taxation of samples. The Court noted that there was no quantitative connection between the furnishing of sample books to retailers and the purchase of fabric by retailers for their customers. Therefore, R & M was required to pay sales/use tax on their purchases of sample books.*

12 CSR 10-103.250 Purchaser's Responsibility for Paying Use Tax

PURPOSE: This rule explains when a purchaser is required to pay use tax pursuant to sections 144.610 and 144.655, RSMo.

(1) In general, when a taxpayer purchases tangible personal property from outside the state for use, storage or consumption in this state the taxpayer must pay use tax. Any Missouri tax due is reduced by any sales or use tax properly paid to another state.

(2) Basic Application of Tax.

(A) Generally, if a taxpayer does not pay use tax to a seller on out-of-state purchases of tangible personal property for use, storage or consumption in this state, the taxpayer must file a use tax return and remit the tax.

(B) If a taxpayer's out-of-state taxable purchases on which tax has not been paid are less than two thousand dollars ($2,000) in a calendar year, the taxpayer is not required to file a use tax return. This is an exclusion from filing, but not a two thousand dollar ($2,000) use tax exemption. Therefore, if the annual taxable purchases on which tax has not been paid equal or exceed two thousand dollars ($2,000) the taxpayer must report and pay on the total taxable purchases (including the first two thousand dollars ($2,000) of taxable purchases). Any amount of tax reported by the taxpayer must be remitted with the return.

(C) An out-of-state seller with nexus must collect tax even if the buyer expects to have less than two thousand dollars ($2,000) in out-of-state purchases for the year.

(D) The buyer is liable for the tax on its purchases unless the buyer has proof of paying Missouri tax to the seller. When an out-of-state seller has nexus, the seller is also liable for the tax.

(3) Examples.

(A) A grocery store purchases a freezer for $5,000 from an out-of-state seller. The out-of-state seller did not collect any use tax. The grocery store is required to report and pay tax on this purchase on its next use tax return.

(B) Same facts as in (3)(A), except the out-of-state seller invoiced the grocery store and collected Missouri use tax. The grocery store is not required to report this purchase on a use tax return.

(C) During the first quarter of the calendar year, a taxpayer registered to pay use tax purchased $1,800 of tangible personal property from an out-of-state seller. The seller did not collect tax and there is no exemption covering these purchases. Because the year-to-date total of out-of-state taxable purchases is less than $2,000, the taxpayer is not required to report the $1,800 on that quarter's use tax return or pay any tax, even though the department may require a registered taxpayer to file a return. The taxpayer should check the box on the return marked "I do not have cumulative taxable purchases totaling more than $2,000 this calendar year and do not owe Consumer's Use Tax at this time." The taxpayer should not enter figures on the consumer's use tax line on the return. If figures are entered on the return, the tax is due.

(D) A taxpayer purchases $1,500 of items during each of the first and second quarters. No purchases were reported for the first quarter. Because the year-to-date total of out-of-state taxable purchases now exceeds $2,000, the taxpayer must report the entire $3,000 ($1,500 from the first quarter plus $1,500 from the second quarter) on the second quarter use tax return and pay the tax.

(E) A Missouri business purchases goods from a Kansas distributor and picks up the goods in Kansas. The Kansas distributor properly collects Kansas tax on the transaction. The business brings the goods to Missouri for use. Use tax is due on the goods, but a credit is allowed for the amount of Kansas tax paid on the goods. If the Kansas tax was not properly due under Kansas law on the transaction, no credit is allowed against the Missouri use tax.

AUTHORITY: section 144.705, RSMo 2000. Original rule filed Nov. 9, 2000, effective May 30, 2001.*

**Original authority: 144.705, RSMo 1959.*

Rembrandt Restaurant, Inc. v. Director of Revenue *(AHC 1995). The fact that an out-of-state seller has nexus with Missouri does not relieve the Missouri purchaser from liability for use tax.*

Witt & Juckette v. Director of Revenue *(AHC 1981). A construction company was charged Iowa tax on materials. The tax was improperly imposed. The commission held no credit was allowed against Missouri tax because the tax was not properly imposed.*

12 CSR 10-103.360 Titling and Sales Tax Treatment of Boats and Outboard Motors

PURPOSE: Section 144.020.1(1), RSMo, taxes the retail sale of tangible personal property. This rule interprets the sales tax law as it applies to the sale and lease of watercraft and outboard motors pursuant to sections 144.020.1(8), 144.069 and 144.070, RSMo. Chapter 306 requires the owner to obtain a certificate of title for certain watercraft and outboard motors from the Department of Revenue.

(1) In general, the purchaser must pay directly to the Department of Revenue the sales tax due on the sale of watercraft and outboard motors required to be titled. The sales tax due on the sale of all other watercraft must be collected from the purchaser by the seller and remitted to the Department of Revenue.

(2) Definition of Terms.

(A) Boat/outboard motor leasing company—A company obtaining a permit from the Department of Revenue to operate as a boat or outboard motor leasing company.

(B) Documented vessel—A vessel documented by the United States Coast Guard or other agency of the federal government. Such vessels are not subject to any state or local sales or use tax but are instead subject to an in-lieu watercraft tax. See section 306.016, RSMo, for information regarding the in-lieu tax.

(C) Motorboat—Any watercraft propelled by machinery, whether or not such machinery is the principal source of propulsion.

(D) Outboard motor—an internal combustion engine with an integrally attached propeller or waterjet propulsion unit temporarily secured to the stern of a boat.

(E) Personal watercraft—A class of inboard vessel, which uses an internal combustion engine powering a jet pump as its primary source of propulsion.

(F) Vessel—Any motorboat or motorized watercraft; also, any watercraft more than twelve feet (12') in length which is powered by sail or a combination of sail and machinery. The term vessel does not include any watercraft solely propelled by a paddle or oars. A vessel kept within this state must be registered and titled.

(G) Watercraft—Any boat or craft used or capable of being used as a means of transport on waters. Watercraft may or may not be required to be titled.

(3) Basic Application of Tax.

(A) The sales tax due on the sale of a vessel or outboard motor required to be titled must be paid by the purchaser directly to the department at the time the vessel or motor is titled. The rate of sales tax paid is based on the address of the purchaser and the rate in effect on the date the purchaser submits the application for title to the department.

(B) The seller must collect the sales tax due on the sale of all watercraft not covered by section (1) above from the purchaser in accordance with the general sales tax collection methods under Chapter 144, RSMo.

(C) Persons engaged in the lease or rental of watercraft or outboard motors have the option of—

1. Paying taxes on the full purchase price of the watercraft or outboard motor at the time of purchase or titling, depending on the type of craft; or

2. Collecting and remitting the sales tax on the gross receipts derived from the lease or rental of the watercraft or outboard motor.

(D) A person engaged in the lease or rental of watercraft or outboard motors must choose one of the methods listed in (3)(A) or (3)(B) and must treat all watercraft and outboard motors the same for sales tax purposes.

(E) If the lessor chooses the option to collect and remit sales tax based on the lease or rental of the watercraft or outboard motor, the lessor must register with the Department of Revenue as a leasing company pursuant to section 144.070, RSMo. If this option is chosen, the lessor should not pay sales tax on the purchase of the watercraft or outboard motor at the time of purchase or titling.

(F) The rental or lease of watercraft or outboard motors is not considered a fee paid in or to a place of amusement, entertainment or recreation and is therefore not subject to tax as such. This provision avoids double taxation on the purchase and subsequent lease or rental of watercraft or outboard motors.

(G) Examples.

1. Mr. Justin purchases a motorboat and a personal watercraft (jet ski) to be kept in this state. Because the motorboat and jet ski are types of vessels, they are required to be titled. Mr. Justin must title the motorboat and jet ski with the Department of Revenue and pay sales tax on the purchase price of these items directly to the department upon titling. The local sales tax is based upon Mr. Justin's address.

2. Ms. Lindsey purchases a canoe from a boat dealer. A canoe is not a vessel, therefore a title is not required. The seller should charge sales tax on the purchase price of the canoe at the time of sale. The local sales tax is based upon the place of business of the boat dealer.

3. Mr. Biggs rents motorboats, canoes and paddleboats. Mr. Biggs has chosen to pay sales tax at the time of purchase or titling and not to collect sales tax on the rental receipts of the watercraft. Mr. Biggs must pay sales tax on the purchase price of the motorboats directly to the Department of Revenue at the time the boats are titled because the motorboats are vessels required to be titled. Mr. Biggs must pay sales tax to the seller of the canoes and paddleboats at the time of purchase; the canoes and paddleboats are not required to be titled because they do not meet the definition of vessel. Mr. Biggs has chosen to pay sales tax at the time of purchase or titling and should therefore use this same method for all watercraft and outboard motors that will be rented.

4. Mr. Kev also rents motorboats, canoes and paddleboats. However, Mr. Kev has chosen to collect and remit sales tax on the rental receipts rather than to pay sales tax on the purchase price of the watercraft. In order to choose this option, Mr. Kev must first register with the Department of Revenue as a leasing company. Mr. Kev should then provide his lease/rental number to the Department of Revenue at the time of titling of the motorboats. Mr. Kev should also present a resale exemption certificate to the vendor of the canoes and paddleboats at the time of purchase. Mr. Kev has chosen to collect and remit sales tax on the rental receipts and should therefore use this same method for all watercraft and outboard motors that will be rented.

5. JJ's Resort operates a place of amusement at which motorboats and canoes may also be rented. JJ has the option of paying tax on the motorboats and canoes at the time of purchase or titling or to collect and remit sales tax on the rental receipts. Should JJ choose to pay tax at the time of purchase or titling, the gross receipts from the rental of the motorboats and canoes are not subject to

sales tax notwithstanding the fact that JJ operates a place of amusement, entertainment or recreation.

AUTHORITY: sections 144.270 and 144.705, RSMo 1994. Original rule filed Nov. 10, 1999, effective May 30, 2000.*

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

12 CSR 10-103.370 Manufactured Homes

PURPOSE: Sections 144.044 and 700.010, RSMo create a partial tax exemption for new manufactured homes and an exclusion for qualifying used manufactured homes. This rule interprets the tax law as it applies to the sale of manufactured homes. This rule also identifies charges included as part of the retail sale price of the manufactured home.

(1) In general, the retail sale of a new manufactured home is considered to be a sale of sixty percent (60%) tangible personal property and forty percent (40%) service. The sixty percent (60%) portion of the sale price is subject to tax. The sale of a used manufactured home upon which Missouri tax has already been paid is not subject to tax. The sale of a used manufactured home on which Missouri tax has not already been paid is subject to tax on one hundred percent (100%) of the sale price.

(2) Definition of Terms.

(A) Dealer—any person, other than a manufacturer, who sells or offers for sale four (4) or more manufactured homes, recreational vehicles or modular units in any twelve (12)-month period.

(B) Manufactured home—a factory built structure designed as a dwelling unit with or without permanent foundation, equipped with the necessary service connections and made to be readily moveable on its own running gear. A modular unit is not a manufactured home and is subject to the same tax rules that apply to a building constructed by a contractor.

(C) Setup—the services performed and the materials used to perform the service for the purchaser at the occupancy site including but not limited to, moving, blocking, leveling, anchoring, supporting and assembling multiple or expandable units.

(3) Basic Application of Tax.

(A) Dealers selling new manufactured homes must collect and remit tax on sixty percent (60%) of the gross receipts from these sales. The dealer must provide the buyer of a new manufactured home a signed receipt confirming that tax has been paid.

(B) The owner of a new manufactured home must produce a signed receipt for the tax on the purchase price of the new manufactured home when applying for title. If the owner fails to present a signed receipt, the owner must remit the tax due on the new manufactured home prior to title being issued.

(C) The sale of a used manufactured home upon which Missouri tax has already been paid is not subject to Missouri tax. The sale of a used manufactured home upon which Missouri tax has not been previously paid is subject to tax on one hundred percent (100%) of the purchase price unless the used manufactured home meets the requirements of section 700.111, RSMo.

(D) The transfer of the ownership of or title to a manufactured home involving the assumption of the obligation to pay for the home is considered a sale at retail of the manufactured home subject to tax unless Missouri tax has been previously paid.

(E) The new manufactured home dealer is responsible for collecting tax on sixty percent (60%) of the retail sale price. The retail sale price includes additional tangible personal property installed by the manufacturer and the installed price of the following items of tangible personal property if installed by the dealer:

1. Central air conditioning;
2. Dishwasher;
3. Range or cook top;
4. Oven;
5. Microwave oven;
6. Refrigerator;
7. Washer and dryer;
8. Skirting;
9. Anchors and other stabilizing devices;
10. Blocks;
11. Shims;
12. Steps;
13. Gutters;
14. Decks;
15. Awnings; and
16. Plumbing and electrical parts and supplies necessary for installation and hookup of plumbing and electrical apparatus.

Any other tangible personal property added by a dealer should be separately stated and taxed at one hundred percent (100%) of the sale price.

(F) A dealer may elect to separately state charges for delivery, setup and installation. These charges would not be subject to tax because the dealer is performing a service. The dealer should pay tax, at the time of purchase, on any materials used in performing these services. Setup and installation can include but are not limited to adding a deck to the home or pouring concrete slabs as a foundation for the home.

(G) The dealer should pay tax, at the time of purchase, on items that are attached to a used manufactured home on which Missouri tax was previously paid. The dealer should purchase items attached to a used manufactured home on which Missouri sales tax has not been paid under a sale for resale exclusion.

(4) Examples.

(A) A customer purchases a new manufactured home from a dealer for $40,000, including delivery, setup and installation. The manufacturer includes an installed stove, refrigerator, and washer/dryer. The cost of delivery, setup and installation is $5,000. If the dealer includes delivery, setup and installation in the retail sales price, tax is due on 60% of $40,000. If the dealer separately states delivery, setup and installation charges from the retail sales price, tax is due on 60% of $35,000. If the dealer separately states these charges, the dealer should pay tax on its purchase of any materials used for the delivery, setup and installation of the manufactured home. The customer should retain his paid receipt to verify tax paid when making application for license/title/registration of the manufactured home.

(B) A dealer took a manufactured home in trade from a customer. The original owner paid Missouri tax. The dealer sells the used manufactured home. No tax is due on the used manufactured home because tax was paid on the original purchase of the home.

(C) A dealer sold a new manufactured home including a stove and refrigerator added by the dealer. As an incentive, the dealer included a personal computer. The computer should be separately stated from the manufactured home sale price and taxed at 100%. The installed price of the stove and refrigerator can be included in the manufactured home sale price and tax is due on 60% of that price. The dealer may issue a resale exemption certificate when purchasing these items.

(D) A dealer hires a contractor to add patios and garages to the site for customers who purchase new manufactured homes. These charges can be separately stated from the manufactured home sale price without being taxed. The contractor should pay tax on any supplies used to build the patios and garages because the contractor is the final user and consumer of these supplies.

AUTHORITY: section 144.270, RSMo 2000. Original rule filed Jan. 24, 2001, effective July 30, 2001.*

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

***Benton Homes, Inc. v. Director of Revenue**, (AHC 1992). Benton Homes purchased various items such as carpet, drapes, appliances and water heaters for the repair and refurbishment of used mobile homes to upgrade the home for future sale to the public. Benton Homes avoided paying sales and use tax by purchasing these items under the resale exemption; however, the items were never "resold," because the definition of "retail sale" excludes the transfer of used mobile homes. Items such as concrete blocks and furniture that did not lose their individual character when included in a used mobile home sale, were exempt from tax as they were purchased for resale in the regular course of business.*

12 CSR 10-103.380 Photographers, Photofinishers and Photoengravers

PURPOSE: Section 144.020.1(1), RSMo imposes a tax on the retail sale of tangible personal property. Section 144.030.2(2), RSMo exempts materials that become a component part or ingredient of new personal property, which is intended to be sold ultimately at retail. Sections 144.030.2(4) and (5), RSMo exempts certain machinery, equipment, parts, materials, supplies and parts that are for replacement or are for a new or expanded plant. This rule explains the taxation rules for photographers, photofinishers and photoengravers and what elements must be met to qualify for these exemptions.

(1) In general, sales of photographs, photoengravings, photostats, blueprints, electrotypes, stereotypes, wood engravings and similar products are subject to tax. Purchases of materials and supplies that become component parts or ingredients of the final product, such as paper, are exempt. Purchases of machinery and equipment for replacement or for a new or expanded plant are exempt if directly used in the manufacturing process. This may include cameras and lenses.

(2) Definition of Terms: See the definition of terms in 12 CSR 10-111.010 Machinery and Equipment Exemptions.

(3) Basic Application of Tax.

(A) Sales of photoengravings, photostats, blueprints, electrotypes, stereotypes, wood engravings and the like, to consumers for use or consumption, whether on special order, contract or otherwise, are subject to tax.

(B) Sales of finished photographs by photographers are subject to tax. Services rendered by the photographer frequently represent a substantial portion of the total charges. Fees for the photographer's consultative and photographic services up to the point of previews are not subject to tax, if separately stated. Other charges for labor involved in creating the finished photographs are subject to tax even if separately stated. Sales by photographers are taxable because the true object of the photographers' customers is to obtain the finished photograph produced by the service.

(C) The sale of negative development services only, where no prints, slides or other tangible personal property are received, is not subject to tax. The developer must pay tax on materials and supplies used in the development process.

(D) Photographers, photofinishers, photoengravers, blueprinters and other persons purchasing tangible personal property such as paper, which becomes a component or an ingredient part of a finished product that will ultimately be sold at retail, may purchase their supplies under a resale exemption certificate.

(E) Supplies such as film, chemicals and other materials purchased for the photographer's own use or consumption are taxable. Chemicals that are intended to and do remain with the final product are considered an ingredient or component part of the final product for resale and are therefore not subject to tax.

(F) Equipment such as cameras and lenses, which is directly used to manufacture new personal property intended to be sold ultimately at retail, is exempt from tax. Replacement parts for this exempt equipment are also exempt.

(G) A photographer who enters into an exclusive contract with an elementary or high school to photograph students is liable for tax on photographs sold to students. The sales are not exempt as sales to an exempt organization because the sales are made to the students, not to the school.

(4) Examples.

(A) A couple arranged for a photographer to take pictures at their wedding. The photographer charged $150 to take the pictures, develop the film and print proofs. The $150 separately stated labor charge for taking the pictures and developing the proofs is not subject to tax. The couple decides to purchase $200 worth of finished pictures. The $200 for the finished pictures is subject to tax.

(B) If the photographer in example (4)(A) does not separately state the labor charges the entire sale price is taxable.

(C) A person went to a photographer to have glamour portraits taken. The photographer met with the person to discuss the desired results and the purpose of these photographs. The photographer advised the person on clothing to wear, makeup tips, described the setting and lighting, and other means the photographer uses. The photographer took several pictures and created proofs for the person to preview. The photographer charged a nonrefundable "sitting fee." This sitting fee is not subject to tax because this is a distinct and separate charge from the photographs.

(D) A photographer purchases chemicals and other supplies used to develop photographs. These chemicals and supplies are not intended to remain with the photograph. These purchases are subject to tax because they are consumed in the developing process and do not become a component or ingredient part of the photograph.

(E) A photographer purchased new cameras and a new lens to replace a broken lens. The new cameras allow the photographer to photograph twice as many pictures. The photographer can purchase the cameras exempt because it increases productivity. The new lens would also be exempt as replacement equipment.

(F) A photographer scans photographs into a computer for customers. If the photographer provides the customer a CD containing the images, the sale is taxable. However, if the photographer sends the images to customers via the Internet, the photographer has not sold tangible personal property and should not collect tax on this sale.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed June 29, 2000, effective Dec. 30, 2000.*

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

12 CSR 10-103.390 Veterinary Transactions

PURPOSE: Sections 144.010.1(9) and 144.020.1(1), RSMo, taxes the retail sale of tangible personal property. This rule interprets the sales tax laws as they apply to veterinarians. This rule also interprets sales tax exemptions that apply to veterinarians including section 144.030.2(22), RSMo.

(1) In general, veterinarians are rendering services not subject to sales tax. However, veterinarians making retail sales of tangible personal property are responsible for collecting and remitting sales tax on the gross receipts derived from these sales.

(2) Definition of Terms.

(A) Livestock—cattle, calves, sheep, swine, ratite birds, including but not limited to, ostrich and emu, aquatic products as defined in section 277.024, RSMo, elk documented as obtained from a legal source and not from the wild, goats, horses, other equine or rabbits raised in confinement for human consumption.

(B) Prescription drug—controlled drug available by order of a physician's or veterinarian's prescription. A prescription must exhibit one of the following legends:

1. "Caution: Federal law prohibits dispensing without prescription"; or

2. "Caution: Federal law restricts this drug to be used by or on order by a licensed veterinarian."

(C) Veterinarian—a person licensed to treat animals medically.

(3) Basic Application of Tax.

(A) Veterinarians pay tax on their purchases of items consumed in their veterinarian service. Such items may include, but are not limited to, instruments, bandages, splints, syringes, furniture and equipment.

(B) Veterinarians that sell items including but not limited to, leashes, shampoos, collars, nonprescription drugs, and food for animals (except livestock or poultry) for nonfood producing animals are responsible for collecting and remitting tax on the gross receipts derived from these sales. Veterinarians should provide an exemption certificate to the vendor when purchasing items for resale.

(C) Purchases for resale subsequently used or consumed by the veterinarian are subject to the applicable tax. The veterinarian should accrue and remit this tax to the Missouri Department of Revenue. Veterinarians have used or consumed items purchased for resale if they dispense these items to clients for no charge at the same time they provide a nontaxable service. Medications and vaccines administered to livestock or poultry in the production of food or fiber are exempt from tax.

(D) Prescription drugs are exempt. Products bearing labels, such as, "Available through veterinarians," "For sales to licensed veterinarians" or "Available through licensed veterinarians exclusively," are not prescription drugs and are subject to tax.

(4) Examples.

(A) Dr. Kassady purchased an examining table and operating supplies for her veterinarian practice. The purchase is subject to tax.

(B) Dr. Kassady sells dog food at retail. She also operates a kennel. Dr. Kassady feeds the dogs in her kennel the same dog food she purchases exempt for resale. When Dr. Kassady removes the food from inventory to use in her kennel, tax is due.

(C) Dr. Kassady sells a poultry farmer nonprescription vaccines for use on turkeys raised for the production of food. The farmer also purchases vaccines for his pets. The vaccines for the poultry are exempt; however, the vaccines for the pets are subject to sales tax.

(D) Dr. Kassady purchases surgical tools bearing the label "For sale to licensed veterinarians" to use in her practice. This purchase is subject to tax.

AUTHORITY: sections 144.270 and 144.705, RSMo 1994. Original rule filed Nov. 10, 1999, effective May 30, 2000.*

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

***Exotic Animal Paradise, Inc. v. Director of Revenue**, (A.H.C. 1989). Purchases of feed and hay for animals in an amusement park were not tax-exempt under section 144.030.2(1), RSMo, even though some animals qualified as livestock, because the exemption applies only to feed and hay for animals that will be ultimately resold. The park was also denied an exemption under section 144.030.2(18), RSMo, for purchases of prescription drugs because it failed to show that any of the items claimed required a prescription.*

12 CSR 10-103.395 Physicians, Dentists and Optometrists

PURPOSE: Sections 144.010.1(10) and 144.020.1 (1), RSMo, tax the retail sale of tangible personal property. This rule interprets the tax laws as they apply to physicians, dentists and optometrists.

(1) In general, physicians, dentists and optometrists are rendering services not subject to tax. Tangible personal property purchased by physicians, dentists and optometrists and used or consumed in the practice of their professions is subject to tax when purchased. Tangible personal property purchased by physicians, dentists and optometrists and not used or consumed in the practice of their professions is subject to tax when resold by them.

(2) Definition of Terms.

(A) Dentist—a person licensed to practice dentistry.

(B) Optometrist—a person licensed to practice optometry.

(C) Physician—a person licensed to practice medicine,which includes an ophthalmologist.

(D) Used in the practice of the profession—employed in providing, directly or indirectly, professional care.

(3) Basic Application of Tax.

(A) Physicians, dentists and optometrists must pay tax on the purchase of items used or consumed in the practice of their profession. Such items include, but are not limited to, medical instruments, bandages, splints, x-ray film, medical equipment, eyeglasses, frames and lenses.

(B) Physicians, dentists and optometrists that sell items that are not used in the practice of their profession are responsible for collecting and remitting the tax on the gross receipts derived from these sales.

(C) Sales by persons other than physicians or optometrists of eyeglasses, frames and lenses are subject to tax.

(D) See also 12 CSR 10-110.013 Drugs and Medical Equipment, which contains an explanation of other exemptions that may apply to these transactions.

(4) Examples.

(A) A physician purchases diagnostic equipment, surgical tools and supplies for use in providing care to her patients. These purchases are subject to tax.

(B) An optometrist purchases eyeglasses, frames and lenses and uses these items in the diagnosis, treatment and correction of conditions of the human eye. The optometrist charges the patient a separate amount for the frame and lenses. The optometrist should pay tax on these items because they are consumed in the practice of his profession. The amount charged the patient for the frame and lenses is not a sale at retail and is not subject to tax.

(C) A retailer of prescription eyeglasses, lenses and frames advertises that an optometrist is available to examine customers. The optometrist performs eye examinations for customers of the retail but the retailer owns the inventory held for sale. Sales of the eyeglasses, lenses and frames are subject to tax because they are not sales by the optometrist.

(D) An optician makes and sells eyeglasses to fill a patient's prescription. These sales are subject to tax.

(E) A dentist sells accessories such as travel kits, mirrors and other items not related to the practice of the profession. These sales are subject to tax.

AUTHORITY: section 144.010 and 144.020, RSMo Supp. 2001. Original rule filed April 1, 2002, effective Oct. 30, 2002.*

**Original authority: 144.010, RSMo 1939, amended 1941, 1943, 1945, 1947, 1974, 1975, 1977, 1978, 1979, 1981, 1985, 1988, 1983, 1996, 1998, 1999, 2001 and 144.020, RSMo 1939, amended 1941, 1943, 1945, 1963, 1965, 1972, 1975, 1979, 1982, 1985, 1996, 1998, 2001.*

***William H. Grant III, O.D. v. Director of Revenue** (AHC 1995). An optometrist operated a business composed of two elements, a professional practice and the sale of articles of tangible personal property associated with eye care and eyeglass repair. The Commission found that sales of frames, eyeglass cases, and other item's reasonable related to providing the professional service were not subject to tax.*

12 CSR 10-103.500 Sales of Food and Beverages to and by Public Carriers

PURPOSE: Section 144.020.1(1), RSMo, taxes the retail sale of tangible personal property. This rule interprets the sales tax law as it applies to the sale of food and beverages to and by public carriers.

(1) In general, the sales of food and beverages to public carriers are subject to tax unless the carrier charges a separate amount for the sale of these items to its passengers or crew.

(2) Definition of Terms.

(A) Airline—a person engaged in the carriage of persons or cargo for hire by commercial aircraft pursuant to the authority of the federal Civil Aeronautics Board, or successor thereof.

(B) Missouri passenger miles—miles from airline flights that either land in or take off from locations in Missouri.

(C) Public carrier—a person engaged in the business of transporting persons or cargo for hire for the use or benefit of all.

(3) Basic Application of Tax.

(A) Public carriers that purchase food and beverages in this state to be used in serving passengers and crew should pay tax on these items at the time of purchase, unless the public carrier separately charges for the sales of these items.

(B) A public carrier may issue a resale exemption certificate to a seller of food and beverages if the public carrier sells the food and beverages to its passengers or crew and charges them a separately stated amount for these items. If a public carrier chooses this option, it is subject to tax on the gross receipts from all sales in this state of food or beverages to passengers or crew.

(C) Federal statutes exempt Amtrak from state sales tax on the gross receipts from sales in this state to passengers or crew.

(D) Airlines which purchase alcoholic beverages from wholesale distributors must remit tax of those beverages on the following basis:

1. On all sales made on the ground in this state, tax should be collected on the sales price of the drink;

2. The tax due on sales made in flight should be determined by multiplying the tax rate times the Missouri gross liquor revenues; and

3. The Missouri gross liquor revenues are the airline's total gross liquor revenue times the percentage of Missouri passenger miles to total passenger miles.

(E) Federal law, 49 U.S.C. 40116 (c), prohibits a state from taxing activities on flights that merely fly over a state without taking off or landing from an airport in the state.

(4) Examples.

(A) Cool Crowd Airlines is engaged in the business of transporting persons and cargo for hire and has operating facilities in this state where aircraft are furnished with food and beverages. Cool Crowd does not separately charge for sales of food and beverages to its passengers or crew and therefore must pay tax on the purchase of these items when they are delivered in this state.

(B) Assume the same facts as in example one except that Cool Crowd does separately charge for sales of food and drink to passengers or crew. In this instance, Cool Crowd should issue a resale exemption certificate to its food and beverage vendors and purchase these items tax free. Cool Crowd should then collect and remit tax on all sales of food and beverages that occur in this state.

(C) Cool Crowd Airlines purchases alcoholic beverages tax free for resale both in clubs located in this state and in flight. Cool Crowd should remit sales tax on the total gross receipts resulting from all sales made on the ground in this state. For sales occurring in flight, Cool Crowd should remit use tax on the Missouri gross liquor revenues. The Missouri gross liquor revenues are computed by multiplying the airline's total gross liquor revenue times a fraction, the numerator of which is Missouri passenger miles and the denominator of which is total passenger miles.

AUTHORITY: sections 144.270 and 144.705, RSMo 1994. Original rule filed Nov. 10, 1999, effective May 30, 2000.*

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

***Republic Airlines Inc. v. Wisconsin Department of Revenue**, 159 Wis. 2d 247; 464 N.W. 2d 62: (Wisc. App. 1990). Republic reported tax on the gross receipts of food, beverages and peanuts based on a ratio of revenue passenger miles flown in Wisconsin (the numerator), to its revenue passenger miles everywhere (the denominator). The numerator included flights that landed in or took off from Wisconsin but did not include overflights. The Wisconsin Department of Revenue adjusted the numerator of this fraction upward to include overflights. The Wisconsin Court of Appeals ruled that the Wisconsin statute did not authorize the inclusion of flyover miles in the sales tax apportionment factor, even though such inclusion was authorized by the applicable regulation. The court determined that the Legislature's use of the word "in" in the statute did not authorize the Revenue Department's promulgation of a regulation including miles merely "over" the State in the apportionment factor.*

12 CSR 10-103.555 Determining Taxable Gross Receipts

PURPOSE: Section 144.021, RSMo, imposes a tax on a seller's gross receipts. This rule provides guidance for reporting gross receipts.

(1) In general, all gross receipts resulting from the sale of tangible personal property and taxable services should be reported to the department. When filing a return, the taxpayer should deduct nontaxable receipts from gross receipts to arrive at taxable sales.

(2) Definitions.

(A) Gross receipts—the total amount of the sale price of taxable services and tangible personal property including any services, other than charges incident to the extension of credit, that are a part of such sale and are capable of being valued in money, whether received in money or otherwise.

(B) Rebate—a return of part of an amount given in payment.

(C) Taxable sales—the total amount of gross receipts plus or minus any adjustments permitted or required by law.

(3) Basic Application of Tax.

(A) Tax is imposed on the total amount of the sale price received for the sale of tangible personal property and taxable services. The total amount of each sale should be reported as gross receipts even if the seller separately states to the customer the various components of the sale. Exempt sales should be deducted from gross receipts to arrive at taxable sales. Tax collected as a part of a sale should not be included in gross receipts.

(B) When a taxpayer receives consideration other than money, the full market value of the item exchanged should be included in gross receipts.

(C) When the taxpayer accepts third party coupons, the total sale price includes the value of the coupon. When the taxpayer accepts third party coupons along with food stamps, the value of the food stamps is not included in taxable sales, but the value of the coupon is included in taxable sales.

(D) The value of a coupon issued by the seller is not included in taxable sales.

(E) Rebates from sellers or manufacturers do not reduce taxable sales, except for rebates on motor vehicles, boats, trailers and outboard motors.

(F) A taxpayer accepting an article in trade as a credit or part payment on the purchase price should include the value of the article in gross receipts. The value of the article should be deducted from gross receipts when calculating taxable sales.

(G) Money received in advance, such as down payments, layaways or gift certificates, are not included in gross receipts until the sale has been consummated.

(H) Charges to customers for the extension of credit, such as late fees or financing charges are excluded from gross receipts.

(I) A seller's expenses associated with utilizing the service of credit card companies are not excluded from gross receipts.

(J) If the taxpayer's inventory is stolen or destroyed by fire or other casualty, the insurance receipts are not subject to tax and should not be included in gross receipts.

(4) Examples.

(A) A grocery store accepts manufacturer's coupons from its customers on purchases of various goods. The store sells aluminum foil for $1.50. The customer presents to the store a $.50 manufacturer's coupon and pays the remaining balance of $1.00. The store submits the $.50 coupon to the manufacturer for payment of the $.50. The gross receipts from the sale of the aluminum foil are $1.50 and total taxable sales are $1.50. Tax should be charged on $1.50.

(B) On Tuesdays, the same grocery store in Example (A) doubles all manufacturers' coupons. The store then receives $.50 from the customer and $.50 from the manufacturer. Gross receipts are $1.00, and total taxable sales are $1.00. Tax should be charged on $1.00.

(C) An appliance manufacturer offers a $100 cash rebate on an $800 refrigerator. The store selling the refrigerator should charge tax on $800. Tax is due on $800, whether the rebate is received by the customer at the time of purchase or a later date.

(D) A furniture retailer allows customers to "layaway" their purchases until they have paid the full sale price. When the customer has paid the full sale price, the retailer completes the sale and transfers the furniture to the customer. The furniture dealer should not include the layaway amount in its gross receipts until the sale is complete. At that time the total sale price should be reported as gross receipts.

(E) A construction company purchases a new bulldozer. The equipment dealer agrees to sell it a new machine for $50,000 and give a trade-in allowance of $10,000 for the old one. The equipment dealer should report $50,000 in gross receipts. The equipment dealer should then deduct the $10,000 trade-in value to arrive at taxable sales.

(F) A retailer sells a chair for $100 to a customer who uses his credit card to pay for the purchase. The seller should charge tax on the full $100 sales price of the chair. The seller should report $100 in gross receipts, even though it must pay the credit card company a transaction fee.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Aug. 21, 2000, effective Feb. 28, 2001.*

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

***Central Hardware Company, Inc. v. Director of Revenue**, 887 S.W.2d 593 (Mo. banc 1994). The taxpayers were not entitled to a refund of the sales tax paid on the percentage of their credit sales they paid as fees to credit card companies. The fees were not excludable from the sales price as charges incident to the extension of credit. The fees were an expense paid by the taxpayers to the credit card companies and were not a charge to their customers incident to the extension of credit. They charged their customers the same sales price irrespective of the mode of payment and there was no charge to a customer who paid by credit card. The taxpayers cannot alternatively claim that because they never actually received the fees, they were not part of the gross receipts. The transactions on which the gross receipts were based and on which the sales tax should be calculated were the retail sales that occurred between the taxpayers and their customers and not the transactions between the taxpayers and the credit card companies. The fact that the taxpayers chose to pay the fees out of the credit draft proceeds did not decrease the amount of their gross receipts.*

***Oakland Park Inn v. Director of Revenue**, 822 S.W.2d 425 (Mo. banc 1992). Hotel was liable for sales tax on amounts paid as mandatory gratuities. Under the hotel's banquet contracts, customers were obligated to pay a 16% gratuity. The gratuities were part of the sale price of the food and drink because they were mandatory. The fact that the gratuities were separately stated and served to equalize employee wages does not affect taxability of the gratuity.*

***Golde's Department Stores, Inc. v. Director of Revenue**, 791 S.W.2d 478 (Mo. App. 1990). A department store that paid sales tax on gross sales was entitled to refund of sales tax that was overpaid. Under gross sales reporting method, it reported credit sales for which no payment was ever received. It was entitled to compute its liability under gross receipts reporting method because the law imposes the sales tax based on gross receipts, not gross sales.*

12 CSR 10-103.560 Accrual vs. Cash Basis of Accounting

PURPOSE: Section 144.021, RSMo, imposes tax on a taxpayer's gross receipts. This rule explains when a taxpayer reports its gross receipts depending upon whether the taxpayer is using the accrual or cash basis of reporting.

(1) In general, a taxpayer should report gross receipts in the period in which payment is actually received. A taxpayer using the accrual basis of accounting may report gross receipts in the period in which the transaction takes place.

(2) Application of Tax.

(A) A taxpayer should report the gross receipts from its sales in the period in which payment is received. When the taxpayer and purchaser enter into an installment agreement, the taxpayer should report each installment, less any finance charge, as a part of gross receipts in the period in which payment is received. Tax should be calculated at the tax rate in effect at the time of entering the installment agreement.

(B) A taxpayer using the accrual basis of accounting may report the gross receipts from its sales in the period in which the transaction is completed, rather than the period in which payment is actually received. When the taxpayer and purchaser enter into an installment agreement and the taxpayer uses the accrual basis of accounting, the taxpayer may report the sale price in gross receipts when the revenue is recognized pursuant to generally accepted accounting principles. Tax should be calculated at the tax rate in effect at the time of entering the installment agreement.

(3) Examples.

(A) A furniture retailer, a cash basis taxpayer, sells furniture to a customer and agrees to receive payments on the furniture over a period of 1 year with a 5% interest charge on the unpaid balance. Tax is computed only on the sale price of the furniture, not the finance charge. The amount of each payment, less the tax and finance charge, is included in gross receipts in the period each payment is received. An accrual basis taxpayer may include the entire sale price in the gross receipts at the time of the sale.

(B) A furniture retailer makes a charge sale to a customer in December 1999, with payment due in March. The local sales tax rate changes effective January 1, 2000. If the retailer is a cash basis taxpayer, it charges tax based on the rate in effect in December and reports the gross receipts when received in March. If the retailer elects to report gross receipts on an accrual basis, it charges tax based on the rate in effect in December and it should report the sale in its December gross receipts.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Aug. 1, 2000, effective Jan. 30, 2001.*

**Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1995, 1947, 1955, 1961.*

12 CSR 10-103.600 Sales of Tangible Personal Property and Services

PURPOSE: Section 144.020.1, RSMo provides that sales of tangible personal property and certain enumerated services are subject to tax. Section 144.010.1(3), RSMo defines which charges are subject to tax when included in the sale price of tangible personal property. This rule explains which charges are subject to tax when a transaction involves the sale of a service or both tangible personal property and a nontaxable service.

(1) In general, the sale of tangible personal property is subject to tax unless a specific statute exempts it. The sale of a service is not subject to tax unless a specific statute authorizes the taxation of the service. When a sale involves both tangible personal property and a nontaxable service, the sale of the tangible personal property will be subject to tax, and the service will not be subject to tax, if the sale of each is separate. When the sale of tangible personal property and a nontaxable service are not separable, the entire sale price is taxable if the true object of the transaction is the transfer of tangible personal property. None of the sale price is taxable if the true object of the transaction is the sale of the nontaxable service.

(2) Definition of Terms.

(A) Personal service—service involving either intellectual or manual personal labor of the server rather than a salable product of the server's skill.

(B) Sale price—the consideration paid to the seller for tangible personal property, including any service charges other than charges incident to the extension of credit.

(C) True object—the real object the buyer seeks in making the purchase. The essentials of the transaction determine the true object. The true object of the transaction is the tangible personal property if:

1. The purchaser desires and uses the tangible personal property;

2. The tangible medium is not merely a disposable conduit for the service or intangible personal property;

3. The tangible personal property is a finished product; or

4. The tangible personal property is not separable from the service or intangible personal property.

(D) The true object of the transaction is the service or intangible personal property if the tangible personal property is merely the medium of transmission for an intangible product and can be discarded after the purchaser has obtained access to the intangible component.

(3) Basic Application.

(A) Shipping, Handling, Minimums, Gratuities and Similar Charges.

1. If the purchaser is required to pay for the service as part of the sale price of tangible personal property, the entire sale price is subject to tax.

2. If the purchaser is not required to pay the service charge as part of the sale price of tangible personal property, the amount paid for the service is not subject to tax if the charge for such service is separately stated. If the charge for the service is not separately stated, the entire sale price is subject to tax.

(B) Repair and Personal Services.

1. If the amount paid for the repair or personal service is separately stated from the tangible personal property used to perform the repair or personal service, the amount paid for the repair or personal service is not subject to tax.

2. If the amount paid for the repair or personal service is not separately stated, the entire sale price is taxable. However, if the retail price of the tangible personal property constitutes less than ten percent (10%) of the total sale price, the department will consider none of the sale price as taxable. The seller must pay tax on the purchase of the tangible personal property.

(C) All Other Transactions.

1. If the purchaser obtains a service as part of a transaction in which the true object is the purchase of tangible personal property, the entire sale price is taxable even if the charge for the service is separately stated.

2. If the purchaser obtains tangible personal property as part of a transaction in which the true object of the transaction is the purchase of a service, none of the sale price is taxable unless the charge for the tangible personal property is separately stated. If the charge for the tangible personal property is separately stated only the charge for the tangible personal property is taxable.

(D) A person selling tangible personal property to a retailer of a nontaxable service must collect and remit tax on such sales.

(E) When a service provider also sells tangible personal property in transactions separate from the provision of services, the sales of tangible personal property are subject to tax.

(4) Examples.

(A) A steel fabricator enters into an agreement to fabricate steel beams for a building. The fabricator makes a retail sale of the steel beams. Even though the fabrication labor is separately stated on the sales invoice, the total sale price including charges for the fabrication labor is subject to tax.

(B) A person purchases a compact disc (CD) through a mail order club. The seller charges a set amount for shipping and handling the CD. Because the buyer is required to pay the shipping and handling charge, the entire amount charged, including the shipping and handling, is subject to tax.

(C) A family purchases furniture from an out-of-state seller. The seller gives the buyer a choice of shipping the furniture or the buyer may arrange for the furniture to be delivered to their home. Because the shipping is optional, it is not subject to tax.

(D) A person purchases ten (10) yards of concrete from a concrete company. The concrete company separately states the optional delivery charge but has a mandatory minimum service charge of twenty-five dollars ($25) on all orders less than twelve (12) yards. Tax is due on the concrete price and the mandatory service charge, but not on the delivery charge.

(E) A car dealer sells an automobile to a buyer, which includes as part of the purchase price an initial warranty for services including parts. Tax is due on the entire sale price. The dealer does not owe tax on parts supplied pursuant to the initial warranty when the manufacturer provides the parts to the dealer free of charge. The car dealer also sells the buyer an optional extended warranty beyond the initial warranty for services only. The sale price for the optional warranty is separately stated. The extended warranty is not subject to tax. If the dealer bills the buyer additional charges for repair parts as needed, the dealer must charge the buyer tax on the repair parts. If the extended warranty includes parts, the dealer is liable for tax on the purchase of the parts used to fulfill the extended warranty contract.

(F) Taxpayer sells a typewriter for three hundred dollars ($300) and an optional one (1) year maintenance contract for an additional twenty-five dollars ($25). The maintenance contract is segregated on the billing from the cost of the typewriter. Tax is due on the three hundred dollars ($300) but is not due on the twenty-five dollars ($25) maintenance contract. If the maintenance contract states that the seller provides repair parts, the seller must pay tax on its purchases of repair parts to fulfill the agreement. If the maintenance contract states that the seller bills the customer an additional charge for repair parts, then the seller must collect and remit tax on the amount charged for the parts.

(G) An architect prepares original architectural plans for an addition to a home. Because the true object of this transaction is the architectural service, the original plans and copies prepared by the architect are not subject to tax, unless the architect separately states the charge for the copies. If the architect uses the services of another party to create the copies, the third party should charge the architect tax. Copies of the plans purchased by the homeowner from a third party are subject to tax.

(H) A tool and die manufacturer designs and builds a custom machine tool for a customer. The tool will be installed on the customer's existing equipment. The manufacturer purchases from an independent mechanical engineer shop drawings showing how to build the tool and showing precisely how and where the tool should be installed on the customer's equipment. The manufacturer's agreement with its customer requires that the drawings be provided to the customer along with the tool. The entire purchase price paid by the manufacturer's customer, including the cost of the shop drawings (even if separately stated) is subject to tax. The transfer of the drawings is a part of the sale of the tool.

(I) A monument seller separately states its charges for headstones and inscription of headstones. The entire sale price, including inscription, is taxable.

(J) A person takes her car to a mechanic for new brakes. The mechanic installs new brakes and charges sixty dollars ($60) for the parts and fifty dollars ($50) for labor, which is separately stated on the invoice. Tax is due on the sixty dollars ($60) charge for the brakes. If the mechanic does not separately state the labor, tax should be charged on the total invoice of one hundred ten dollars ($110), because the cost of new brakes exceeds ten percent (10%) of the sale price of the repair.

(K) A warehouse stores and ships materials in cardboard boxes. The charge for the boxes is included in the charge for the warehousing service and not separately stated. The charge for the boxes is not subject to tax, and the warehouse must pay tax on its purchases of the boxes. If the charge for the boxes is separately stated, it is subject to tax.

(L) A binding company binds materials provided to it by customers and also binds books that it sells to the public. Materials and supplies used by the binding company in binding materials for customers are not subject to tax unless the charges for the materials and supplies are separately stated. The binding company must pay tax on its purchase of such materials and supplies. The binding company may purchase exempt from tax materials and supplies it incorporates in books made for sale to the public.

(M) A laundry or dry cleaner provides a nontaxable service and does not collect or remit tax. The laundry or dry cleaner should pay tax on tangible personal property used in performing the service including items such as hangers and plastic bags. If a laundry also sells laundry detergents, sales of the detergents are subject to tax.

(N) A man takes his suit to the dry cleaner with a request to clean and press the suit, replace a missing button and sew a split seam. Because the price of the button and thread is less than ten percent (10%) of the total cost the dry cleaner does not collect tax. The dry cleaner should purchase these materials subject to tax.

(O) A barbershop that also sells hair care products must collect and remit tax on all sales of such products.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed June 8, 2000, effective Jan. 30, 2001.*

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

12 CSR 10-103.610 Sales of Advertising

PURPOSE: This rule explains, pursuant to section 144.034, RSMo, when sales of advertising are sales of a service, which are not subject to tax, and when such sales of advertising are sales of tangible personal property, which are subject to tax.

(1) In general, if a sale of advertising involves the transfer of tangible personal property, it is a sale of tangible personal property subject to tax unless it is preliminary art or the sale is made by an exempt business. If the sale is made by an exempt business, the transaction is the sale of a service and is not subject to tax when the true object of the sale is the advertising. When the true object of a sale by an exempt business is tangible personal property, it is subject to tax.

(2) Definition of Terms.

(A) Advertising—the expression of an idea created and produced for reproduction and distribution in the media, such as television, radio, newspapers, newsletters, periodicals, trade journals, publications, books, other printed materials, magazines, standardized outdoor billboards, direct mail or point-of-sale (POS) displays, and which is designed to promote sales of a particular product or service or otherwise affect consumer behavior.

(B) Advertising agency—a business, not owned by an advertiser, which is directly responsible to an advertiser for and whose predominant functions as a business are the creation or supervision of the production and placement of advertising and advertising materials in the media.

(C) Broadcast station—a radio or television enterprise which engages in the collection, writing, production and dissemination of news, public affairs or entertainment by means of transmitting signals through space or wires intended for reception by the public on a receiving set.

(D) Exempt business—advertising agency, broadcast station, legal newspaper pursuant to Chapter 493, RSMo, or standardized outdoor billboard company exempt from the sales tax law pursuant to section 144.034, RSMo.

(E) Finished art—the final art used in print advertising for actual reproduction by photochemical or other process, or the master tape or film and duplicate prints used in broadcast advertising.

(F) Preliminary art—art, film or tape prepared by a person engaged in the advertising business for the purpose of conveying or demonstrating an idea or concept for acceptance by a buyer before the final approval is given by a buyer for finished art or finished film or tape. Examples of preliminary art include, but are not limited to: roughs; visualizations; comprehensives; layouts; sketches; drawings; paintings; designs; story boards; rough cuts of film and tape; initial audio and visual tracks; work prints; and music or sound effects.

(G) Specialty advertising—items of tangible personal property on which advertising is placed but which have a use and value separate from the advertising. Such items include, but are not limited to: tee shirts, key chains, glassware, frisbees, rulers, pens, calendars, matchbooks, calculators, clocks, notebooks and pocket protectors.

(3) Basic Application.

(A) Sales of advertising by exempt businesses are not subject to tax.

(B) Sales of preliminary art by nonexempt businesses are not taxable if separately stated.

(C) Sales of final art by nonexempt businesses are subject to tax.

(D) Required services included as part of the sale price for taxable advertising are also subject to tax.

(E) Optional services included as part of the sale price for taxable advertising are not subject to tax, if the charge for such services is separately stated. If the charge for such services is not separately stated, the entire sale price is subject to tax.

(F) Services provided in connection with the sale of nontaxable advertising are also not subject to tax.

(G) A person selling equipment, materials or supplies to a seller of nontaxable advertising must collect tax from the seller of such advertising.

(H) Sales of tangible personal property that are not advertising but may contain advertising, such as specialty advertising, are subject to tax, even if the sale is made by an exempt business.

(4) Examples.

(A) The following items are generally considered to be tangible personal property, not advertising, although they may have promotional value:

1. Specialty advertising;
2. Business cards;
3. Brochures and books not promoting sales of products or services;
4. Annual reports;
5. Informational pamphlets not promoting sales of products or services;
6. Training materials not promoting sales of products or services;
7. Banners (not POS);
8. Posters (not POS);
9. Signs (not POS);
10. Educational films not promoting sales of products or services;
11. Employee benefits material and plan descriptions not promoting sales of products or services;
12. Business signage, logos and stationery designs;
13. Business directories including yellow pages;
14. Warranty books and product instructions not promoting sales of products or services; and
15. Items mass produced or reproduced in quantities in excess of that reasonably anticipated to be necessary for an advertising campaign and sold for purposes other than promoting sales of a particular product or service.

(B) The following items are generally considered to be advertising:

1. Printed materials promoting sales of products and services, including fliers, handouts, brochures and sales promotion materials;
2. Direct mail and direct marketing materials (not distributed by mail), promoting sales of products and services;
3. POS materials, including displays, banners, posters and table tents and package designs, promoting sales of products and services;
4. Radio commercials, including film and video cassettes and tapes of them;
5. Television commercials, including film and video cassettes and tapes of them;
6. Audio or visual commercials for promotional or merchandising purposes, including audio and visual tapes, cassettes and films of them;
7. Print media advertising, including magazine ads, newspaper ads, periodical ads, trade journal ads, publication ads, book ads, other printed material, ads and newspaper inserts;
8. Billboards, signage, transit advertising (bus, rail, taxi and airport) and shopping mall and sports arena advertising and displays, promoting sales or products or service;
9. Product and service sales materials for dealers, distributors and other sales persons; and
10. Corporate advertising.

(C) The following services are generally considered not to be taxable if the charges for such services are separately stated:

1. Writing original manuscripts and news releases;
2. Composing music;
3. Conducting research and compiling statistical or other information;
4. Providing time and space for advertising;
5. Arranging for the placing of advertising in newspapers, magazines, television, radio, billboards, transportation facilities or other media;
6. Securing the services of actors, directors and artists; and
7. Delivering or causing the delivery of brochures, pamphlets, cards and similar items after passage of title.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 3, 2000, effective July 30, 2000.*

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

***Gammaitoni v. Director of Revenue,** 786 S.W.2d 126 (Mo. banc 1990). The taxpayer produced commercials on videotape as well as instructional and other non-advertising videotapes. The court held that the true object of the sales of these videotapes was the finished videotapes themselves. The court also held that the taxpayer was not an exempt business under section 144.034, RSMo. The taxpayer did not meet the definition of a broadcast station because it did not transmit by radio or television nor was it a facility equipped for radio or television transmissions. It did not qualify as an advertising agency because it did not contract with advertisers to place the advertising in the media.*

***Travelhost v. Director of Revenue,** 785 S.W.2d 541 (Mo. banc 1990). The taxpayer sold advertising in a magazine it purchased but then distributed for free. The court held that the taxpayer was an advertising agency and therefore exempt pursuant to section 144.034, RSMo from tax on its sales. The court also held that the express terms of section 144.034, RSMo required the taxpayer to pay tax on its purchases of the magazines.*

The Hearst Corp. v. Director of Revenue *(AHC 1992). The taxpayer, a video production house, produced commercials for advertisers. The taxpayer retained the master tape and provided duplicates for use by the advertisers. The commission held that the taxpayer was not an exempt business pursuant to section 144.034, RSMo. However, the commission found that the true object of these transactions was the production services provided by the taxpayer. The taxpayer retained the master and the advertisers had no need for the physical copy of the tape once the commercial was broadcast.*

Neely v. Director of Revenue *(AHC 1990). The taxpayer, a broadcast station, purchased advertising to promote the station from a production house. The commission held that section 144.034, RSMo, was inapplicable because it relates only to sales of advertising by exempt businesses. The taxpayer, an exempt business, was purchasing, not selling, advertising. The production house was not an exempt business. The commission, however, also held that the true object of the transaction was the purchase of advertising services. Therefore, the taxpayer was liable for tax only on the separately stated charge for the finished master tape.*

12 CSR 10-103.700 Packaging and Shipping Materials

PURPOSE: Section 144.010.1(10), RSMo excludes from tax, purchases that are intended to be resold as tangible personal property. Section 144.030.2(2), RSMo exempts materials that become a component part of new personal property. Section 144.011.1(10), RSMo excludes from tax certain items of a non-reusable nature purchased by eating or food service establishments. This rule explains when purchases of packaging and shipping materials are not subject to tax.

(1) In general, purchases of packaging and shipping materials included with, or used to deliver, a product for ultimate sale at retail are not subject to tax. Purchases of non-reusable items by eating or food service establishments are not subject to tax.

(2) Definition of Terms.

(A) Packaging and shipping materials—containers, pallets, drums and other items used to ship merchandise to customers. It also includes supplies used in shipping, such as tape, strapping, plastic peanuts, foam, cardboard pads, packaging slips, etc. Finally, packaging encompasses integral parts of the finished product such as display cartons and packaging containing the product, e.g., cereal box, and shipping containers.

(3) Basic Application of Tax.

(A) The purchase of packaging and shipping materials are taxable if:

1. The packaging is used solely "in house" by the seller and is not subsequently transferred to a purchaser;

2. The packaging material must be returned to the seller and the customer does not acquire title to, ownership of or the right to use the packaging material;

3. The packaging is transferred incidental to the rendering of a non-taxable service, such as with the sale of custom software or color separations; or

4. The packaging is used to ship items that are being transferred as gifts or free samples.

(B) Purchases of items of a non-reusable nature by persons operating eating or food service establishments making retail sales are not subject to tax if the item is furnished with or in conjunction with the retail sale. Such items include, but are not limited to, wrapping and packaging items; and non-reusable paper, wood, plastic and aluminum articles including containers, trays, napkins, dishes, silverware, cups, bags, boxes, straws and toothpicks.

(4) Examples.

(A) A retailer packages its goods to be shipped to its customers. The packaging and shipping items include boxes, pallets, metal banding, cardboard pads, etc. The customer is not required to return any of these items. The retailer does not owe tax on its purchase of these items.

(B) A distributor separately purchases boxes to store its merchandise in its warehouse. These boxes are not subsequently used for shipments to its customers. The purchase of these boxes is subject to tax.

(C) A grocery store purchases bags that its customers use to carry out their groceries. The grocery store may purchase these bags exempt from tax.

(D) A taxpayer purchases or leases pallets that will be used to ship merchandise to its customers. The customer is required to return the pallet and never acquires title to, ownership of or the right to use them. The purchase or lease of the pallets is taxable.

(E) A taxpayer purchases or leases pallets that will be used to ship merchandise to its customers. The customer is required to return the pallet, but does have the right to use the pallet until it is returned. If there is consideration paid for the use of the pallet, the purchase or lease of the pallets is not taxable.

(F) A dry cleaner purchases plastic bags used to protect clothes after cleaning. Because the dry cleaning is not a sale at retail, the dry cleaner must pay tax on the purchase of the bags.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Aug. 21, 2000, effective March 30, 2001.*

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

Brambles Industries, Inc. v. Director of Revenue*, 981 S.W.2d 568 (Mo. banc 1998), the Court held that leases of packaging material are excluded from sales tax when the packaging material is leased for the purpose of transferring the right to use the packaging material to a subsequent purchaser for valuable consideration.*

House of Lloyd v. Director of Revenue*, 884 S.W.2d 271 (Mo. banc 1994) (House of Lloyd II), House of Lloyd (HOL) sold merchandise, such as Christmas gifts, through a hostess program. At issue was the packaging containing the individual boxes that were used to deliver the goods from HOL to its hostesses. DOR argued that HOL was the user and consumer of this packaging. The Court held that the incidental benefit received by the seller did not violate the resale claim of exemption.*

Sipco, Inc. v. Director of Revenue*, 875 S.W.2d 539 (Mo. banc 1994), the purchase of dry ice that was used to package fresh pork products and to transport the products to customers was exempt from tax as a purchase for resale.*

12 CSR 10-103.800 Tax Computation

PURPOSE: Section 144.020, RSMo imposes a four percent sales tax. Section 144.610, RSMo imposes the state's use tax at the same rate as the sales tax. The ***Missouri Constitution****, Article IV, section 43(a) imposes a one-eighth of one percent tax for conservation purposes and Article IV, Section 47(a) imposes a one-tenth of one percent tax for soil and water conservation and for state parks. Missouri law also provides authority for counties, cities and other political subdivisions to enact local taxes. Sections 144.021, 144.080 and 144.285, RSMo require sellers to collect the correct amount of tax. This rule explains how to determine the correct rate of tax.*

(1) In general, the seller should charge the rate of state and local tax in effect on the date of the sale.

(2) Basic Application of Rule.

(A) The state tax rate is 4.225 percent. This is comprised of: Four percent state tax, one-eighth of one percent conservation tax, and one-tenth of one percent soil and water conservation tax.

(B) Local political subdivisions may impose local taxes in addition to the state tax rate. The local tax rate is available from the local jurisdiction or on the department's website.

(C) Tax is calculated at the rate in effect on the date of the sale.

(D) When a change in the tax rate becomes effective, all gross receipts from sales made by the retailer before the effective date of the rate change are subject to the old tax rate. A taxpayer reporting sales on a cash basis should report gross receipts from credit or time sales on a separate line on the return, showing the tax rate in effect when the sales were made. When following this procedure, the entry on the return should specifically state the rate in effect at the time of sale. All gross receipts from sales made on or after the effective date are subject to the new tax rate.

(E) Amounts charged to and received from purchasers as tax are not included in gross receipts.

(3) Examples.

(A) A retailer located in an area with city and county taxes totaling two percent must charge and collect a total sales tax of 6.225% on all sales.

(B) The same retailer as in (3)(A) incorrectly charges its customers 5.225% tax. The retailer is responsible for the additional tax.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Aug. 21, 2000, effective Feb. 28, 2001.*

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

***Associated Industries of Missouri v. Lohman**, 114 S.Ct. 1815 (1994). The U.S. Supreme Court ruled that a local use tax rate greater than the local sales tax rate is unconstitutional.*

***May Department Stores Co. v. Director of Revenue** (AHC 1985). The issue was whether credit sales made in 1982 and reported as gross receipts in 1983 were subject to Proposition C, which increased the state sales tax rate from three percent to four percent, effective January 1, 1983. A cash basis taxpayer had filed its February 1983 sales tax return at the three percent rate on credit sales made to its customers from September 1, 1982 to December 31, 1982. The Commission concluded that the increased rate only applied to those gross receipts attributable to sales made on or after the effective date of the law change.*