
Rules of
Department of Revenue
Division 10—Director of Revenue
Chapter 112—Sales/Use Tax—Contractors

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Title 12—DEPARTMENT OF REVENUE

Division 10—Director of Revenue Chapter 112—Sales/Use Tax—Contractors

12 CSR 10-112.010 Contractors

PURPOSE: This rule interprets sections 144.010, 144.020, 144.030 and 144.062, RSMo as they relate to taxation of sales and purchases by contractors.

(1) In general, a contractor is the final user and consumer of the materials and supplies used and consumed in fulfilling a construction contract and which become part of a completed real property improvement. Consequently, persons selling materials and supplies to a contractor are subject to tax on the gross receipts from all such sales because the purchase is not for resale as tangible personal property.

(2) Definition of Terms.

(A) Contractor—Any person entering into an agreement to improve, repair, replace, erect or alter real property.

(B) Dual operator—A taxpayer who purchases materials and supplies for both consumption, as a contractor, and resale, as a retailer.

(C) Real property—Land and items permanently affixed to land, such as buildings.

(3) Basic Application of Tax.

(A) Title Transfer—If title passes from the contractor to the purchaser before attachment of the tangible personal property to real property, the contractor does not pay tax on its purchase, but must collect tax on the sale price of the item. If title passes after the attachment, the contractor is subject to tax on its purchase of the tangible personal property and does not collect tax on its transfer of ownership or title of the item. In general, title passes after installation is complete, unless the contractor and purchaser expressly agree otherwise.

(B) Dual Operator—When a dual operator purchases materials that are specifically identified for use in a contracting job, it should pay tax on the purchase of the materials. Dual operators should present a resale exemption certificate when purchasing materials for inventory that may be used either for resale or contract jobs. When materials are removed from inventory for use in a contracting job, the dual operator should pay sales tax if purchased in-state or use tax if purchased out-of-state based on the original purchase price of the material.

(C) Flow Through Exemptions—Certain exemptions that are based on the ultimate owner's use of an item (such as the exemption for manufacturing machinery) may flow through to the contractor selling and installing the item. To claim an exemption under these circumstances, the contractor must obtain a signed exemption certificate from the ultimate owner and provide a copy to its supplier.

(D) Flow Through Project Exemptions—A contractor, including subcontractors working for the contractor, constructing, repairing or remodeling facilities for a specific exempt entity, may purchase tax exempt tangible personal property and materials incorporated into or consumed in the project if the exempt entity furnishes to the contractor a project exemption certificate. Tangible personal property and materials that can only be used for one construction, repair or remodeling job which are actually used up in performing the contract are consumed. Examples include sandpaper, fuel to run equipment and drill bits that are actually used up in the performance of the exempt contract. Items that are not consumed are hand tools, drinking water coolers, hardhats and bulldozers. For purposes of this flow through exemption an exempt entity is limited to:

1. Political subdivisions exempt under Article III section 39(10) of the *Missouri Constitution*;
2. Federal government and its instrumentalities;
3. Religious organizations;
4. Charitable organizations;
5. Elementary and secondary schools, public and private; or
6. Higher education institutions, public and private.

(E) No specific form is required for the "Project Exemption Certificate," per section 144.062, RSMo, but the following information must be included:

1. Name and address of exempt entity;
2. Missouri tax identification number of the exempt entity;
3. Signature of an authorized representative;
4. Location of the project;
5. Description of the project;
6. Unique identification number for the project;
7. Beginning and estimated ending date of the project; and
8. Expiration date of the project exemption certificate.

(F) Out-of-State Construction Job—Contractors purchasing tangible personal property in Missouri for use out-of-state are subject to tax on the purchase. However, contractors

may purchase tangible personal property exempt from Missouri tax for use out-of-state on a construction contract with an entity authorized to issue an exemption certificate under that state's law per section 144.030.2(36), RSMo.

(4) Examples.

(A) A company that fabricates windows, doors and siding markets its product in a showroom making direct sales to consumers, and also uses its product as the contractor on construction projects nationwide. The company is a dual operator. It should issue vendors an exemption certificate for all material purchases that are fabricated into their products. All direct sales through the product showroom are subject to tax on the total price of the products sold. If the company purchases materials specifically intended for the manufacture of products to be used on a particular construction project, it should pay tax on its material purchases. However, when the company removes products from inventory and uses them on construction projects, it should accrue tax on the original cost of the materials used to manufacture the product. If the company cannot determine where it purchased the original materials, it may accrue tax at the rate where the company is located.

(B) A Missouri-based company has expanded its operations. It now fabricates for sale the manufacturing machinery to produce its products. It has also developed an earthquake proof structure that it is contracting with municipalities nationwide to erect. The company should charge tax on the sale of the production machinery. It may sell the machinery tax exempt if the purchaser issues a valid exemption certificate. The purchaser need not be the entity using the machinery. The company may accept a "flow through" exemption from a contractor.

(C) A company should accrue tax on the original purchase cost of items taken out of inventory to be consumed in the fulfillment of its construction contracts. The company does not have to self-accrue tax on materials consumed in construction contracts if the exempt entity issues a project exemption certificate (as authorized by section 144.062, RSMo). If the contract is for an out-of-state project and the out-of-state entity is authorized to issue a certificate of exemption for purchases to a contractor under the provisions of that state's laws, the company may accept an exemption certificate and not self-accrue tax.

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

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

Blevins Asphalt Construction Co. v. Director of Revenue, 938 S.W.2d 899 (Mo. banc 1997). The Court ruled that an asphalt construction company was liable for sales tax on its purchases of paving materials and equipment used in the company's installation contracts. The company's purchases of paving materials used in the company's manufacture of asphalt, which in turn was used to fulfill its installation contracts, were not exempt as a manufacturing material that becomes a component part of new personal property intended for sale for consumption. The company did not create new personal property to be sold, because title to the asphalt passed after the asphalt was installed.

Bratton Corp. v. Director of Revenue, 783 S.W.2d 891 (Mo. banc 1990). The Court ruled that sales tax was properly imposed on a Missouri contractor for building materials that were purchased from Missouri vendors for use in out-of-state projects. The taxpayer argued that the sales were exempt from taxation because the materials were intended for use in projects in other states. The contractor contended that the sales should have been treated as integral parts of interstate commerce and therefore held immune from sales tax as a retail sale in interstate commerce. The Court held that the sales were complete when the materials were delivered to the taxpayer in Missouri. The fact that the ultimate destination of the goods was to points outside the state was not a factor in determining whether the interstate commerce exemption should have applied. In this case, the Missouri vendors transferred title or ownership to the goods to the taxpayer upon delivery in Missouri.

Overland Steel Inc. v. Director of Revenue, 647 S.W.2d 535 (Mo. banc 1983). The Court ruled that a seller of steel products that also acted as a construction contractor was not allowed to claim an interstate sales tax exemption on materials purchased within the state under a resale exemption certificate and used in construction projects located outside the state. The materials were not, as the taxpayer had argued, resold in interstate commerce, but were consumed by the taxpayer prior to their out-of-state use. There was no evidence to indicate that the materials were either purchased in contemplation of a construction project outside the state or delivered out of state as an integral part of a sales contract.

Marsh v. Spradling, 537 S.W.2d 402 (Mo. banc 1976). The Court ruled that a taxpayer that designed and installed custom-made cab-

inets in houses under construction was not liable for tax on receipts from the job. The Court found that because the cabinets became fixtures of the house upon installation, there was no transfer of personal property to which the sales tax could apply.

Dravo Corp. v. Spradling, 515 S.W.2d 512 (Mo. banc 1974). The Court ruled that a company that establishes a new plant by contracting with another company to purchase the machinery and build the plant is entitled to the sales tax exemption for machinery and equipment used to establish a new plant. Further, the installing contractor does not use or consume the machinery in a way that would make the contractor liable for tax. The contractor merely has temporary possession for a specific purpose. The machinery itself is exempted, not any particular person, if the machinery is used to establish a new plant.

New York Carpet World of St. Louis, Inc. v. Director of Revenue (AHC 1996). The Commission ruled that a carpet company's sales of floor coverings combined with installation, were not sales of tangible personal property subject to tax. The company's sales contracts provided that title to and ownership of the floor covering materials did not pass until they were permanently and completely installed. No taxable sale of tangible personal property occurred because the materials were already part of the real property when title and ownership passed.

Morton Buildings, Inc. v. Director of Revenue (AHC 1989). An Illinois company purchased raw materials and manufactured prefabricated building components outside Missouri. The company used the components to construct buildings in Missouri. The Commission ruled that the sales of the buildings in Missouri were not subject to tax because title to and ownership of the buildings did not transfer until they were attached to real property. The company did not owe sales tax on the purchase of materials because they were not purchased in Missouri. Finally, the company did not owe tax on its use of the materials in Missouri because the materials were used outside Missouri to manufacture the prefabricated building components. The company's manufacturing process so altered the raw materials that they could no longer be identified as taxable articles of tangible personal property when used in Missouri. The components themselves were made by the company, not purchased, and therefore, were not subject to tax when the company used the components.

12 CSR 10-112.300 Sales to the United States Government and Government Contractors

PURPOSE: This rule explains the tax consequences of transactions involving the United States government and government contractors including the exemptions and exclusions provided by sections 144.030.1, 144.010.1(9) and 144.030.2(6), RSMo.

(1) In general, sales to the United States government are exempt from tax. Tax does not apply to items purchased by government contractors for resale to the United States government. In addition, tangible personal property used exclusively in the manufacturing, modification or assembling of products sold to the United States government is exempt from tax.

(2) Definition of Terms.

(A) Government contractor—a business or individual which enters into an agreement with the United States government to provide products or services to the government in exchange for payment. This includes businesses or individuals that contract with the United States government to operate facilities owned by the United States government. As used in this regulation, this term is not limited to businesses that perform improvements to real property (i.e., construction contractors).

(B) Ownership—the right to exercise dominion and control over property. A person who has the right to designate who is to receive title to the property has an ownership interest in the property.

(C) Purchaser—a person who receives title or ownership to property in return for payment or consideration.

(D) United States government—any entity comprising a part of the government of the United States of America, including but not limited to, any United States government agency and any branch of the armed forces of the United States. Federal savings and loan associations and national banks are not included in this definition.

(3) Basic Application of the Tax.

(A) Sales to the United States government are exempt from tax under the doctrine of intergovernmental immunity and section 144.030.1, RSMo, which provides an exemption from tax for any transaction which the state of Missouri is prohibited from taxing under the Constitution or laws of the United States. This exemption applies only to sales in which the United States government is the purchaser.

1. If a government contractor receives title or ownership to property to be used in the performance of a government contract, the government contractor (not the United States government) is the purchaser of the property. The sale is not exempt from tax under the doctrine of intergovernmental immunity.

2. When property is purchased pursuant to a government contract or purchase order that provides that title to the property will pass directly from the seller to the United States government, and the United States government also controls the disposition and use of the property so that the contractor does not obtain ownership to the property, then the United States government is the purchaser of the property for sales tax purposes. The sale is exempt from tax. The exemption applies in these circumstances, even if the government contractor remits payment to the seller for the property.

(B) The resale exclusion applies to property purchased by government contractors and resold to the United States government. The purchase of property for resale is not subject to tax; and the resale of property by a government contractor to the United States government is also not subject to tax.

1. Some United States government contracts incorporate standard contract clauses from the Federal Acquisition Regulations or similar contract clauses that state that title to property purchased by the government contractor pursuant to the contract shall vest in the United States government. The transfer of title under these title vesting clauses can result in a resale of the property by the government contractor to the United States government.

2. In some cases the cost of the property purchased by a government contractor is allocated among a number of different contracts. Under these circumstances, the resale exclusion would apply only to that portion of the cost that is allocated to contracts that include the title vesting clauses. Under the title vesting clauses, the United States government does not receive title to property that is leased by a government contractor for use in a government contract, since the government contractor does not receive title to the leased property. The resale exclusion does not apply to property leased for use in the performance of a government contract.

(C) Tangible personal property which is used exclusively in the manufacturing, processing, modification or assembling of products to be sold to the United States government is exempt from tax pursuant to section 144.030.2(6), RSMo.

1. This exemption does not apply to property used for any functions other than manufacturing, processing, modification or assembling, even if such use is minor. Nor does it apply to property used, even partially, for functions relating to the production of products for customers other than the United States government.

2. This exemption applies to any item of tangible personal property that otherwise qualifies for the exemption, including machinery, equipment, parts, materials and supplies.

(4) Examples.

(A) The U.S. Department of Agriculture purchases desks and office supplies for use in its offices. The sale is exempt from tax under the doctrine of intergovernmental tax immunity.

(B) A corporation enters into a contract with the U.S. Army to operate a plant where ammunition will be produced. The contract gives the Army the right to control the use and disposition of any property purchased in connection with the contract. The contract incorporates a title vesting clause found in Federal Acquisition Regulation 52.245-5. The corporation orders bins that will be used for storing inventory in a warehouse that is part of the facility. The corporation orders the bins using purchase orders that state the U.S. Army will receive title to the bins directly from the seller. The corporation pays the seller for the bins, and is later reimbursed for this expense by the Army. Under these facts, the Army is the purchaser of the bins, and the transaction is exempt from tax.

(C) A corporation enters into a contract with the U.S. Air Force requiring the corporation to build and deliver six (6) airplanes. The contract incorporates the title vesting clause found in Federal Acquisition Regulation 52.232-16. The corporation also manufactures airplanes for commercial airlines. After it signs the Air Force contract, the corporation purchases office supplies that cost ten thousand dollars (\$10,000). Based on allocation formulas that the Air Force reviews and approves, one-tenth (1/10) of this expense (\$1,000) is charged to the Air Force contract. The remaining costs are not charged to government contracts. The corporation has purchased one-tenth (1/10) of the office supplies for resale to the Air Force, and owes no tax on one thousand dollars (\$1,000). The corporation owes tax on the remaining nine thousand dollars (\$9,000) of this purchase.

(D) The same corporation leases forklifts for use in its plant. Some of the forklifts are used from time-to-time in connection with the Air Force contract. Based on allocation

formulas that the Air Force reviews and approves, one-twentieth (1/20) of the charges for leasing the forklifts is charged to the Air Force contract. The resale exclusion does not apply to this transaction. The lease payments are taxable unless some other exemption to tax applies to the lease (e.g., the lease payments may be exempt because the lessor has paid tax on its purchase of the forklifts pursuant to section 144.020.1(8), RSMo).

(E) The same corporation purchases special paints and adhesives that are used in the manufacture of the Air Force airplanes, and for no other purpose. These supplies are exempt from tax under section 144.030.2(6), RSMo.

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; and 144.705, RSMo 1959.*

United States v. Lohman, 74 F.2d 863 (8th Cir. 1996). *Sale of electricity used in an Army ammunition plant was an exempt sale to the United States government where the government entered into the sales contract with the power company, and title to the electricity passed directly from the power company to the government. Although a corporation operated the plant and paid the power company for the electricity, the court ruled that the government, not the corporation, was the purchaser of the electricity.*

Olin Corp. v. Director of Revenue, 945 S.W.2d 442 (Mo. banc 1997). *Government contractor that paid sales and use tax on tangible personal property used in its performance of a contract with the United States government was entitled to a refund of the tax, because the government was the purchaser of the property. Under the contract and purchase orders, title to the property passed directly from the sellers to the government. The contract gave the corporation no discretion in designating who was to receive title to the property. In addition, the corporation's use of the property was "severely limited" by the contract's specifications. Under these facts, the court found that the corporation did not receive ownership or title to the property, and was not the purchaser of the property.*

McDonnell Douglas Corp. v. Director of Revenue, 945 S.W. 437 (Mo. banc 1997). *Overhead materials and supplies purchased by government contractor, the cost of which were allocated to government contracts that included title vesting clauses, were resold to*



the government by the contractor. Accordingly, the government contractor's purchase of these items was for resale, and exempt from tax.