
**Rules of
Department of Revenue
Division 10—Director of Revenue
Chapter 101—Sales/Use Tax—Nature of Tax**

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**Title 12—DEPARTMENT OF
REVENUE**

**Division 10—Director of Revenue
Chapter 101—Sales/Use Tax—Nature of
Tax**

12 CSR 10-101.500 Burden of Proof

PURPOSE: Section 136.300, RSMo, addresses which party has the burden of proof on any factual issue relevant to ascertaining the liability of a taxpayer. Sections 32.200, article V, section 2; 144.210; and 144.635, RSMo, also address the burden of proof and in particular the use of exemption certificates to meet the burden. Section 621.050, RSMo, addresses which party has the burden of proof in a proceeding before the Administrative Hearing Commission. This rule explains how these rules work together to determine which party has the burden of proof in a dispute involving sales or use tax.

(1) In general, the taxpayer has the burden of proof except in specific circumstances.

(2) Definition of Terms.

(A) Burden of proof—Burden of persuading the finder of fact that the existence of a fact is more probable than the nonexistence.

(B) Good faith—Honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry.

(3) Basic Application of Burden of Proof.

(A) The department always has the burden of proof regarding—

1. Whether the taxpayer has been guilty of fraud with attempt to evade tax; and

2. Whether the taxpayer is liable as the transferee of property of another taxpayer.

(B) The taxpayer always has the burden of proof on any issue with respect to the applicability of any tax exemption or credit.

(C) The taxpayer has the burden of proof on all other issues unless—

1. The taxpayer has produced evidence establishing there is a reasonable dispute with respect to the issue;

2. The taxpayer has adequate records of its transactions and provides the Department of Revenue reasonable access to these records;

3. In the case of a partnership, corporation or trust, the net worth of the taxpayer does not exceed seven (7) million dollars and the taxpayer does not have more than five hundred (500) employees at the time the final decision of the director of the Department of Revenue is issued; and

4. If all three (3) conditions are met, the department has the burden of proof with respect to any factual issue relevant to ascertaining the liability of a taxpayer.

(D) A taxpayer can generally meet its burden of proof by obtaining and maintaining exemption certificates signed by the purchaser or its agent. An exemption certificate that is not obtained in good faith, however, will not satisfy the burden of proof. Even when a taxpayer does not have a valid exemption certificate, it may prove that the transaction is exempt from sales and use tax by proof admissible under the applicable rules of evidence.

(4) Examples.

(A) The department alleges that a taxpayer fabricated exemption certificates in order to evade sales tax. The department has the burden of proof.

(B) The taxpayer sells tangible personal property and claims that the sale was exempt from tax. The taxpayer always has the burden of proof.

(C) The taxpayer sells tangible personal property and claims that it was a sale for resale. The taxpayer presents a valid exemption certificate. The taxpayer has met its burden of proof.

(D) A jeweler sells an expensive diamond ring to his neighbor, known to the taxpayer not to be in the jewelry business. The neighbor presents an exemption certificate claiming that the ring was purchased for resale and therefore exempt from tax. The jeweler may not accept the exemption certificate without further inquiry.

(E) A jeweler sells an expensive diamond ring to a purchaser unknown to the jeweler but does not receive an exemption certificate. On a claim that this was an exempt sale for resale, the jeweler has the burden of proof and may prove that the sale was exempt through testimony and documents admissible under the rules of evidence.

(F) A jeweler sells an expensive diamond ring to a purchaser unknown to the jeweler but does not receive an exemption certificate. The jeweler presents to the department an invoice for the diamond ring showing it was sold to a wholesale jeweler. The burden of proof shifts to the department, unless the jeweler is a partnership, corporation or trust with a net worth of more than seven (7) million dollars or with more than five (500) hundred employees.

*AUTHORITY: section 144.270, RSMo 1994. * Original rule filed Nov. 18, 1999, effective June 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 taxpayer has the burden of proof in most cases. "Good faith," in the context of exemption certificates, requires honesty of intention and freedom from knowledge of circumstances that ought to put the holder upon inquiry. Accord Conagra Poultry Co. v. Director of Revenue, 862 S.W.2d 915 (Mo. banc 1993); Gammaitoni v. Director of Revenue, 786 S.W.2d 126 (Mo. banc 1990).