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

## Title 12—DEPARTMENT OF REVENUE
**Division 10—Director of Revenue**
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**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.*

***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).*

**12 CSR 10-101.600 Successor Liability**

*PURPOSE: Section 144.150, RSMo makes a person acquiring a business, or the stock of goods or assets of a business, liable for the seller's tax liability. This rule explains how that liability is incurred and what steps must be taken in order for a purchaser to be relieved of this liability.*

(1) In general, any purchaser of substantially all of a business or stock of goods of a business is liable for the seller's tax liability. The purchaser is required to withhold and remit to the department sufficient purchase money to pay the seller's tax liability upon the purchase of the business or stock of goods. The purchaser is relieved of liability by receiving from the seller a receipt from the director of revenue showing that the taxes have been paid.

(2) Definition of Terms.
   (A) Purchase money—any consideration flowing directly, or indirectly through intermediate parties or otherwise, to a seller and is not limited to actual cash transferring directly to the seller.
   (B) Stock of goods—the amount of movable personal property and/or inventory of a business.
   (C) Purchaser—any "person" as defined in section 144.010.1(6), RSMo who, directly or indirectly, purchases substantially all of a business or stock of goods.

(3) Basic Application.
   (A) Any person acquiring a business should require the seller to provide a receipt from the department stating that all taxes have been paid or a certificate of no tax due issued by the department. The purchaser can rely on the department's certificate of no tax due for one hundred twenty (120) days from issuance.

(B) If the seller does not provide a receipt or certificate of no tax due from the department, the purchaser must pay any tax due. The purchaser should withhold a sufficient amount of the purchase money to cover taxes, interest and penalties due and unpaid by all former owners or predecessors, whether immediate or not. If the purchaser does not withhold and remit a sufficient amount, the purchaser is personally liable for the unpaid taxes, interest, additions to tax and penalties accrued. To determine the amount to be withheld, the purchaser should require the seller to provide a statement from the department showing the amount of taxes, interest, additions to tax or penalties due and owing, including the date of the last payment for such taxes, interest, additions to tax or penalties.

(C) A purchaser who obtains a certificate of no tax due or withholds and pays the department a sufficient amount of the purchase money to cover the amount of tax, interest, additions to tax and penalties is not liable for additional tax owed as the result of a subsequent audit of the tax periods covered by the previous owner. The previous owner remains liable for the tax.

(D) Any creditor acquiring the business or stock of goods as a result of an enforcement action, or any immediate or subsequent purchaser from such creditor, is not liable for the taxes, interest, additions to tax and penalties of the previous owner. The previous owner remains liable.

(E) Reliance on an affidavit pursuant to Missouri's Bulk Transfer Act stating that there were no creditors of the business will not relieve a purchaser from a previous owner's tax liability.

(4) Examples.

(A) A taxpayer purchased an ice cream business. The previous owner had a tax liability with the department. The taxpayer required the previous owner to provide a statement from the department listing the amount owed. The taxpayer withheld the amount of the tax liability from the purchase price. The previous owner then provided a statement from the department showing the tax had been paid. The taxpayer is relieved of any liability and may pay the balance of the purchase price to the previous owner. If the previous owner had not provided the statement, the taxpayer would have been required to remit the withheld money directly to the department.

(B) A motel owner with an accrued tax liability of $18,000 defaulted on a loan. The lender acquired the motel in a private settlement with the owner. A taxpayer subsequently purchased the motel from the lender without receiving from the lender a receipt from the director of revenue showing that the amount of taxes, interest to date and penalties have been paid or a certificate stating that no taxes were due. The lender and the taxpayer are personally liable for the unpaid tax, penalty and interest to date on the motel. If the lender had acquired the motel through an enforcement action, the taxpayer would not have been liable for the previous owner's tax.

(C) A taxpayer acquired a car and some records from a business, which were not substantially all of the business or stock of goods of the business. The taxpayer is not liable for any tax liability of the previous owner.

*AUTHORITY: sections 144.150 and 144.270, RSMo 2000.\* Original rule filed Nov. 9, 2000, effective May 30, 2001. Amended: Filed Aug. 26, 2005, effective Feb. 28, 2006.*

***Surrey's on the Plaza, Inc. v. Director of Revenue,** 128 S.W. 3d 508 (Mo. banc 2004). The Court held that a successor is liable for tax owed by its predecessor unless the successor both withholds the amount of the tax from the purchase price and remits the amount withheld to the director. The Court also held that a business owner sells "all or substantially all of his or their business or stock of goods" when it sells all or substantially all of the assets of a distinct business or location, even if that does not constitute all or substantially all of the seller's assets.*

***Air Management Supply, Inc. v. Director of Revenue** (AHC 1998). The taxpayer purchased a car and some records from its predecessor. The AHC ruled that in order to be liable as a successor, a taxpayer must purchase all or substantially all of a business or stock of goods.*

***Winchell's Donuts Houses Operating Co. v. Director of Revenue** (AHC 1998). The taxpayer entered into a lease and license agreement of a donut shop with an individual. The licensing agreement required the individual to pay all taxes incurred in the operation of the business. The individual failed to pay federal taxes and the IRS enforced its lien, locking the doors of the donut shop. The taxpayer was forced to pay for the food inventory to protect its interest in the real property and equipment. Although taxpayer acquired the stock of goods (food inventory), because they were acquired as a result of an enforcement action by a creditor, the taxpayer was not liable as a successor.*

***Kim Poore v. Director of Revenue** (AHC 1997). The taxpayer maintained that the seller of the business had committed fraud by not disclosing certain encumbrances. The AHC held that the taxpayer was nevertheless liable as a successor.*

***Stuffin's Corp. v. Director of Revenue** (AHC 1993). The AHC held that the successor liability imposed upon a purchaser may be greater than the purchase price paid for the business.*