
Rules of
Department of Revenue
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions

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**Title 12—DEPARTMENT OF
REVENUE**

**Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

**12 CSR 10-110.013 Drugs and Medical
Equipment**

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

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

(2) Definition of Terms.

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

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

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

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

(3) Basic Application of Tax.

(A) Sales of prescription drugs, insulin, medical grade oxygen, drug samples and materials used to manufacture samples, which may be dispensed by a licensed practitioner are exempt from tax. Sales of over-the-counter drugs when sold to an individual with a disability or to the individual's agent are exempt from tax. When selling over-the-counter drugs to an individual with disability, the retailer should obtain a purchaser's signed statement of disability. The retailer should retain these statements for three (3) years. The statement should include the purchaser's name, type of purchase and amount of purchase, and be signed by the purchaser or the purchaser's agent. The retailer should request a form of identification, such as driver's license, credit card, etc. to verify the identity of the purchaser. Sales of prosthetic devices as defined on January 1, 1980, by the

Federal Medicare Program under Title XVIII of the Social Security Act of 1965 are exempt from tax.

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

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

1. Dentures
2. Inlays
3. Bridge work
4. Fillings
5. Crowns
6. Braces, or
7. Artificial dentistry and dental reconstructions, which are made, manufactured or fabricated from molds or impressions made by dentists of the mouths of their particular patients and sold to dentists for insertion in the patient's mouth as the direct support of, substitution for, or part of the patient's teeth.

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

1. These specific items are—
 - A. Ambulatory aides
 - B. Braille writers
 - C. Electronic Braille equipment
 - D. Home respiratory equipment and accessories
 - E. Hospital beds and accessories
 - F. Stairway lifts
 - G. Wheelchairs, manual and powered
2. If purchased by or on behalf of a person with one or more physical or mental disabilities to enable them to function more independently, the following items are also exempt:
 - A. Electronic print enlargers and magnifiers
 - B. Electronic alternative and augmentative communication devices
 - C. Items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities
 - D. Reading machines
 - E. Scooters

(4) Examples.

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

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

Type of Purchase _____
 Amount _____
 Type of ID _____
 ID Number _____
 Name (print) _____
 Signature _____

(B) Examples of exempt prosthetic devices include:

1. Breast prosthetics, including surgical brassieres for postmastectomy patients
2. Cardiac pacemakers
3. Colostomy and other ostomy bags and the necessary equipment required for attachment
4. Electronic speech aids if the patient has had a laryngectomy or his/her larynx is permanently inoperative
5. Hearing aids and hearing aid supplies
6. Hemodialysis equipment
7. Maxillofacial devices and devices which replace all or part of the ear or nose
8. Prosthetic lenses which replace the lens of an eye
9. Urinary collection systems, including Foley catheters, when replacing bladder function in cases of permanent urinary incontinence
10. Eyeglasses, contact lenses, bedpans and incontinent apparel are not considered prosthetic devices and are subject to sales tax

(C) Examples of exempt orthopedic devices include:

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

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

1. Restorative materials.
 - A. Acrylics
 - B. Aluminum crowns
 - C. Amalgam

- D. Bases and liners
- E. Cements
- F. Chrome steel crowns
- G. Copper bands
- H. Crown forms
- I. Dentin enamel adhesives
- J. Denture anchors
- K. Denture repair materials
- L. Denture teeth
- M. Gold
- N. Mercury
- O. Pins
- P. Pit and fissure sealants
- Q. Porcelain
- R. Posts
- S. Temporary filling materials
- T. Zinc oxide (Eugenol)
- 2. Prosthetic devices and supportive materials.
 - A. Acrylics
 - B. Bonding materials
 - C. Chrome alloys
 - D. Composed materials
 - E. Denture anchors
 - F. Denture repair materials
 - G. Denture teeth
 - H. Implant materials
 - I. Metal alloys
- 3. Orthodontic devices and materials.
 - A. Arch bar splits
 - B. Bone grafting materials
 - C. Cresitine
 - D. Endodontic materials
 - E. Face bow head gear
 - F. Gor-tex grafting materials
 - G. Gutta percha points
 - H. Muscosal grafts (natural and artificial)
 - I. Orthodontic appliances
 - J. Orthodontic brackets
 - K. Orthodontic elastics
 - L. Orthodontic expansion screw
 - M. Orthodontic resins
 - N. Orthodontic separators
 - O. Orthodontic waxes
 - P. Orthodontic wires
 - Q. Root canal sealants
 - R. Silver points
 - S. Surgical wires
- (E) Sales of other specific health-related equipment and accessories are exempt from sales tax.
 - 1. These specific items are—
 - A. Ambulatory aides
 - B. Braille writers
 - C. Electronic Braille equipment
 - D. Hospital beds and accessories
 - E. Home respiratory equipment and accessories
 - F. Stairway lifts
 - G. Wheelchairs, manual and powered

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

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

*AUTHORITY: section 144.270, RSMo 1994. * Original rule filed Sept. 29, 1999, effective April 30, 2000.*

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

EBI Medical Systems, Inc. v. Director of Revenue (AHC 1997). The taxpayer manufactured and sold osteogenic (bone) stimulators. The devices provided small amounts of electrical current that stimulate the bone to promote growth and healing, and were available by prescription only. The taxpayer argued the stimulators were exempt from taxation under section 144.030.2(18), RSMo, using three alternative theories: (1) as a prosthetic device, (2) as an orthopedic device, and (3) as a prescription drug. The Commission found the stimulator was an orthopedic device, but not a prosthetic device nor a prescription drug. The stimulators qualified as orthopedic devices under Regulation 12 CSR 10-3.852(3) that defines orthopedic devices to include orthotics. The Commission defined orthotics as “an orthopedic appliance or apparatus used to support, align, prevent, or correct deformities or to improve the function of movable parts of the body.” The Commission concluded the stimulator promotes bone growth to correct deformities, and therefore, was an orthotic and an orthopedic device. The Social Security Act of 1965, 42 U.S.C. Section 1395x(s)(8), defines prosthetic devices as devices “which replace all or part of an internal body organ.” Since the stimulators do not “replace all or part of the function of a permanently inoperative or malfunctioning internal body organ,” the stimulators were not prosthetic devices. The federal definition of “Prescription drug,” set forth in 21 U.S.C.A. Section 321(g)(1), specifically excludes devices or their component parts or accessories. The Commission found the stimulator was a device, and therefore, by definition, was not a prescription drug.

Red Line Medical Supply, Inc. v. Director of Revenue (AHC 1995). This case involved a taxpayer engaged in the business of selling medical supplies at retail. The taxpayer stated its belief that enteral nutrients were “prosthetic devices” under Title XVIII of the Social Security Act of 1965 and, therefore, its sales of the nutrients were exempt from Missouri sales/use tax. The Commission found that the federal statutes were interpreted in part by the Carriers Manual and, therefore, could be utilized in determining whether enteral nutrients were prosthetic devices. It further found, however, that the manual did not define enteral nutrients as prosthetic devices. The Commission also found that under Missouri case law, **Medic House, Inc. v. Director of Revenue, 799 S.W.2d 81 (Mo. banc 1990)**, in order for enteral nutrients to qualify as “prosthetic devices,” they must “(1) ‘replace all or part of an internal body organ’ and (2) be ‘medically required.’” Applying the facts to the case, the Commission found that enteral nutrients were not prosthetic devices and, therefore, taxpayer should have collected and remitted Missouri sales taxes on its sales of enteral nutrients.

Four Rivers Home Health Care, Inc. v. Director of Revenue (AHC 1992). Taxpayer sold oxygen for medicinal use and also sold durable medical equipment. Taxpayer did not collect or remit sales tax on either oxygen or durable medical equipment because it considered both to be exempt pursuant to 144.030.2(18), RSMo. Taxpayer sold oxygen only upon a physician’s prescription; but taxpayer did not have a licensed pharmacist on the premises. Taxpayer also sold wheelchairs, motorized three-wheel vehicles, crutches, walkers, canes, commode chairs, pressure pads and cushions, seat lift chairs and patient lifts, arm slings, flow meters, oxygen regulators and intermittent partial pressure breathing apparatus. The Commission found that oxygen was a drug. However, it is not designated as a prescription drug. The Missouri Supreme Court has ruled that the sales tax exemption does not apply to this oxygen since persons other than a licensed pharmacist dispense it. **Medic House, Inc. v. Director of Revenue, 799 S.W.2d 81 (Mo. banc 1990).** The Commission found that a prosthetic device physically replaces a missing organ. A device that accommodates the absence of an organ or supplements the impaired function of an organ is not a prosthetic device. The listed durable medical equipment did not replace a missing organ and were not prosthetic devices. The Commission also found that orthopedic devices are defined in 42 U.S.C.1395x(s)(9).

Leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements, are exempt if required by a change in the patient's physical condition. The durable medical equipment items sold by taxpayer were not artificial limbs or braces. These items are not exempt under section 144.030.2(18), RSMo.

12 CSR 10-110.016 Refunds and Credits

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

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

(2) Basic Application of Tax.

(A) A taxpayer may file a claim for a refund within three (3) years after the date of an overpayment. The date of the overpayment is the due date of the original return or the date paid whichever is later. The department will not consider a claim unless it is filed within the three (3)-year period. Every claim must be in writing under oath, and must state the specific grounds upon which the claim is founded. If the overpayment is due to an error or omission in a previously filed return, the claim must be accompanied by an amended return for each period in which the tax was originally reported. If the error or omission is corrected in the return immediately following the filing period in which the error or omission occurred, no amended return or claim for refund is required.

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

(C) The department will issue a statement approving the credit in the amount of the

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

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

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

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

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

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

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

(J) The taxpayer and the department may extend by agreement the period allowed for

filing a claim for refund. However, such an agreement is allowed only if the time for filing a claim for refund has not yet expired.

(3) Examples.

(A) A vendor collects tax on a sale to a customer that takes place in August and reports it on its August sales tax return. In October, that customer presents a valid exemption certificate for the August sale. To claim a refund, the vendor must complete a notarized claim for refund and submit it with a copy of the invoice, the customer's exemption certificate and an amended August return.

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

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

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

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



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

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

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

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