Rules of
Department of Revenue
Division 10—Director of Revenue
Chapter 3—State Sales Tax

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Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax

12 CSR 10-3.002 Rules

PURPOSE: This rule is a general statement describing the nature of all sales tax rules.

(1) Rules are published in order to exemplify the sales tax statute and to inform the reader as to the interpretation which the Department of Revenue places upon the statute in the course of its administration and enforcement of the sales tax law itself. Any interpretive rule is subject to immediate change without prior notice to reflect statutory amendments and the final decisions of the Administrative Hearing Commission and Missouri courts.

(2) If a particular question or problem is considered and covered by these rules, it is not necessary that the taxpayer be issued a ruling on that question or problem.

(3) The rules issued by the Department of Revenue are intended to convey general principles, concepts and guidelines to the lay reader and the audit staff personnel of the department. They are intended to supplement and exemplify the statute and not to replace it.

(4) Particular facts and circumstances surrounding any given transaction may vary greatly and the reader whose particular question or problem is not covered by these rules is urged to consult the statute itself, seek advice from competent tax practitioners and, when necessary, seek a written revenue ruling from the Department of Revenue.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 270-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 6, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.003 Rulings
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 270-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. This rule was previously filed as 12 CSR 10-3.560. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

***State ex rel. Thompson-Stearns-Roger v. Schaffner**, 489 SW2d 207 (Mo. banc 1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.*

12 CSR 10-3.004 Isolated or Occasional Sales

PURPOSE: This rule is a general guideline to those matters considered by the Department of Revenue in determining whether a sale was an isolated or an occasional sale. This rule interprets and applies sections 144.010 and 144.011, RSMo.

(1) Determining whether the sale of tangible personal property is subject to the general sales tax is dependent upon whether or not the seller is engaged in the business of selling tangible personal property at retail.

(2) Except as specified in this rule, the isolated or occasional sale of tangible personal property by a person not engaged in that business does not constitute engaging in business, within the meaning of the sales tax law.

(3) In determining whether or not a person is engaged only in the isolated or occasional sale of property or service, the Department of Revenue will look to the following criteria:

(A) Any holding out as being engaged in business by the seller such as telephone yellow page listing, business cards, solicitation, advertising, business licenses and the like;

(B) Regularity and number of sales within a given period;

(C) Duration of sales activity;

(D) The nature of the service or property being sold and the nature of the market;

(E) The physical setting in which the sales activities are conducted; and

(F) The nature and types of customers.

(4) Persons who, on an isolated or occasional basis, sell tangible personal property in the course of the partial or complete liquidation of a household, farm or nonbusiness enterprise will not be deemed to be engaged in business, even if the total amount of the gross receipts from those sales exceeds three thousand dollars ($3000) in any calendar year.

(5) Except as specified in section (4), a person who sells, even on an isolated or occasional basis, tangible personal property for a total amount of gross receipts in any calendar year in excess of three thousand dollars ($3000) will be deemed to be engaged in the business of selling such property and the entire gross receipts will be subject to the sales tax.

(6) Under circumstances in which a person is deemed to be engaged in the business of selling, his/her sales are taxable even though the total amount of gross receipts from those sales do not exceed three thousand dollars ($3000) in the calendar year.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 88 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 6, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

**Original authority 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 since section 144.010.1(2) specifically provides that "business" and an "isolated occasional sale" are distinct terms, no tax is due on isolated or occasional liquidation sales by parties not engaged in the business of selling items sold.*

12 CSR 10-3.005 Isolated or Occasional Sales by Businesses

PURPOSE: This rule sets forth the situations in which an isolated or occasional sale will be nontaxable even though gross receipts exceed three thousand dollars. This rule interprets and applies sections 144.010 and 144.011, RSMo.

(1) This rule sets forth the situations in which an isolated or occasional sale will be non-taxable even though the gross receipts exceed three thousand dollars ($3000). In each of the instances, the sale is not treated as a sale at

retail and for that reason is excluded from the tax.

(2) The transfer of tangible personal property to a corporation solely in exchange for its stock or securities is not subject to sales tax.

(A) Example: John Jones owns and operates a candy store as a sole proprietorship. He decides to incorporate his business and he exchanges all of his business assets (tools, cash registers, display counters, inventory, office equipment) for stock. No sales tax would be due in this situation in that the transfer of the business assets is specifically excluded from the definition of a retail sale.

(3) The transfer of tangible personal property to a corporation by a shareholder as a contribution to the capital of the transferee corporation is not subject to the sales tax.

(A) Example: John Jones, who owns one hundred percent (100%) of the stock of John Jones Pharmacy, Inc., decides to contribute his five thousand-dollar ($5000) library of medical books and pharmacology books to the corporation and he does not receive back any stock, bonds or cash. No sales tax would be due in this situation because the contribution would not be a retail sale. If, on the other hand, John sold the books to his corporation in exchange for five thousand dollars ($5000) in cash, he would owe state sales tax.

(4) The transfer of tangible personal property to a partnership solely in exchange for a partnership interest therein is not subject to sales tax.

(A) Example: John and Bill decide to form a law firm. John transfers five thousand dollars ($5000) worth of desks, file cabinets and office equipment to the partnership and Bill transfers a five thousand-dollar ($5000) law library and each receives a fifty percent (50%) interest in the partnership. No sales tax would be due on either one of these transfers because they would be excluded from the definition of a retail sale.

(5) The transfer of tangible personal property by a partner as a contribution to the capital of the transferee partnership is not subject to the sales tax.

(A) Example: John and Bill, who are equal partners in a law firm, decide that John will contribute an additional five thousand dollars ($5000) in cash to the firm and Bill will contribute a photocopy machine of equal value. No sales tax would be due on Bill's contribution because it would not be included within the definition of a retail sale.

(6) The transfer by one corporation of substantially all of its tangible personal property to another corporation pursuant to a merger or consolidation effected under the laws of Missouri or any other jurisdiction is not subject to the sales tax.

(A) Example: Bill owns one hundred percent (100%) of the stock in Bill's Drug Store, Inc. A national chain decides to buy him out and it takes over the drug store giving Bill ten (10) shares of its own stock in exchange for all of the stock in Bill's Drug Store, Inc. No sales tax would be due in this situation in that the transfer of assets from Bill's Drug Store, Inc., to the national chain is not included within the definition of a retail sale.

(7) The transfer of tangible personal property by a corporation or a partnership to one (1) or more of its shareholders or partners as a dividend, current distribution, return of capital, distribution in partial or complete liquidation of the corporation, the partnership, a partner's interest or in redemption of a shareholder's interest is not subject to the sales tax.

(8) The transfer of tangible personal property incident to the liquidation or cessation of a taxpayer's trade or business, conducted in proprietorship, partnership or corporate firm is not subject to sales tax except to the extent any transfer is made in the ordinary course of a taxpayer's trade or business.

(A) Example: Sam's Super Market has a going out of business sale during which it sells all of the cash registers, display counters, refrigeration equipment and all remaining inventory of grocery items. The sales of the grocery items are subject to sales tax but not the cash registers, counters or refrigeration equipment.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Aug. 6, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

**Original authority 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 since section 144.010.1(2) specifically provides that "business"and an "isolated or occasional sale" are distinct terms, no tax is due on isolated or occasional liquidation sales by parties not engaged in the business of selling items sold.*

***Loethen Amusement, Inc. v. Director of Revenue**, Case No. RS-86-0130 (A.H.C. 10/2/87). The Administrative Hearing Commission held this transaction is subject to Missouri sales tax in that there is no exemption for partial liquidation of a business. The exemption provisions contained in 144.011(2), RSMo and 12 CSR 10-3.005 relate only to complete liquidation of a business.*

12 CSR 10-3.006 Isolated or Occasional Sales vs. Doing Business—Examples

PURPOSE: This rule provides accurate examples of the treatment of isolated or occasional sales and interprets and applies sections 144.010 and 144.011, RSMo.

(1) The following are general examples illustrating the treatment of isolated or occasional sales:

(A) A homeowner holds a garage sale in which s/he disposes of old clothing, furniture, appliances and other household goods, the proceeds of which are less than three thousand dollars ($3000). This is an isolated or occasional sale by one who is not engaged in the business of selling tangible personal property and is not subject to the sales tax;

(B) A farmer decides to purchase a new riding lawnmower and s/he sells his/her old mower to his/her neighbor, for less than three thousand dollars ($3000). This is an isolated or occasional sale, not subject to the sales tax;

(C) Mr. Smith regularly goes to farm sales, auctions and garage sales looking for bargains and he holds his own garage sale on a monthly basis in which he disposes of his purchases for an appropriate profit. Even though the total sales may be less than three thousand dollars ($3000), Mr. Smith is not making isolated or occasional sales, but is actually engaging in the business of selling and his sales are subject to the sales tax;

(D) Rolling Stone Construction Company purchases a new bulldozer and sells its old bulldozer to farmer Jones for three thousand two hundred dollars ($3200). Even though Rolling Stone is not in the business of selling property, its occasional sales exceed three thousand dollars ($3000) and it is subject to the sales tax;

(E) Mr. Smoothly sells his personal yacht for ten thousand dollars ($10,000). Mr. Smoothly is subject to sales tax on the isolated or occasional sale of the yacht because the gross proceeds exceed three thousand dollars ($3000) and are not in partial or complete liquidation of a household;

(F) The ABC law firm sells its company jet for one hundred fifty thousand dollars ($150,000) and purchases a newer model.

ABC law firm is subject to sales tax on the sale of the jet;

(G) Sam's Super Market decides to remodel its store and it purchases new refrigeration equipment selling the old equipment at public auction for four thousand dollars ($4000). Sam's Super Market is subject to sales tax on the sale of the equipment; and

(H) Sally Brush frequently goes to summer flea markets, arts and craft festivals and neighborhood affairs to sell her paintings, sketches and artifacts. Sally is not making isolated or occasional sales, but is actually engaging in the business of selling and her sales are subject to sales tax even though the total sales may be less than three thousand dollars ($3000).

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 6, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

**Original authority 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 since section 144.010.1.(2) specifically provides that "business"and an "isolated or occasional sale" are distinct terms, no tax is due on isolated or occasional liquidation sales by parties not engaged in the business of selling items sold.*

12 CSR 10-3.007 Partial Liquidation of Trade or Business

PURPOSE: This rule interprets the sales tax law as it applies to the partial liquidation of a trade or business and interprets and applies section 144.011, RSMo.

(1) A business which sells a part of its operation and continues to operate is responsible for collecting tax on the tangible personal property sold.

(A) Example: Joe's company manufactures paint and paint brushes. If Joe's company sells the paint manufacturing section of his company, he should charge sales tax on all tangible personal property sold as part of the partial liquidation which is not exempt for other reasons.

(2) An ongoing business which sells part of its equipment is subject to sales tax on the gross receipts, unless the sale meets the isolated or occasional sales exemption for sales under three thousand dollars ($3000) (see 12 CSR 10-3.004 and 12 CSR 10-3.005).

(A) Example: Ed's Grocery, maintained as an ongoing concern, sells one (1) of its used cash registers, that is not to be replaced, for two thousand dollars ($2000). The sale which would otherwise be taxable is exempt because it meets the isolated or occasional sale exemption for nonbusiness sales under three thousand dollars ($3000).

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

12 CSR 10-3.008 Manufacturers and Wholesalers

PURPOSE: This rule interprets the sales tax law as it applies to manufacturers and wholesalers, and interprets and applies sections 144.010.1(8) and 144.020, RSMo.

(1) Manufacturers, processors, wholesalers, jobbers and others engaged primarily in the sale of tangible personal property at wholesale are subject to tax on all retail sales even if they occur on an isolated or occasional basis.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 27 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.010 Fireworks and Other Seasonal Businesses

PURPOSE: This rule interprets the sales tax law as it applies to the sellers of fireworks and others engaged in seasonal businesses and interprets and applies section 144.010, RSMo.

(1) Sales of fireworks or other items will not be treated under the isolated or occasional sale exception merely because the sales are for a short duration or are seasonal. Persons who engage in the business of selling these items at retail are required to obtain a Missouri retail sales tax license and to otherwise comply with the sales tax law.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 94 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.012 Sellers Subject To Sales Tax

(Rescinded August 9, 1993)

AUTHORITY: section 144.270, RSMo 1986. This rule was previously filed as rule no. 28, Jan. 22, 1973, effective Feb. 1, 1973. S. T. regulation 010-5 was filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed April 29, 1983, effective Sept. 11, 1983. Emergency rescission filed Feb. 19, 1933, effective March 1, 1993, expired June 28, 1993. Rescinded: Filed Feb. 19, 1993, effective Aug. 9, 1993.

***State ex rel. Thompson-Stearns-Roger v. Schaffner**, 489 SW2d 207 (Mo. banc 1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.*

***Martin Coin Co. of St. Louis v. Richard A. King**, 665 SW2d 939 (Mo. banc 1984). The court held in **Scotchmen's Coin Shop v. Administrative Hearing Commission**, 654 SW2d 873 (Mo. banc 1983) that sales of coins for their value as precious metal constituted the sale of personal property subject to sales tax. Martin Coin attempted to distinguish its activities from those of Scotchman's by asserting that it was an agent between two principals and that it was not a vendor, but merely a broker. Martin Coin purchased the coins in question on its own line of credit,*

was liable to the vendor of the coins, bore the risk of nonpayment by its customers, deposited the proceeds from the sales in its own bank account and paid the supplier for coins ordered. In the court's opinion, Martin Coin was involved in both a) the purchase of coins from the supplier and b) the sale of coins to customers. The latter constituted a taxable event. Additionally, the court noted that while Martin Coin attempted to label itself an agent, rather than a vendor, there was no evidence in the record to indicate that the vendors of the coins had any control over Martin Coin; thus a key element of agency was lacking. The court refused on procedural grounds to hear the issue which Martin Coin raised in its brief concerning invasion of the federal government's exclusive power to regulate foreign commerce.

***Chase Resorts, Inc. v. Director of Revenue**, Case No. RS-85-0780 (A.H.C.7/30/87). Petitioner stores and rents boats. In conjunction with this business, Petitioner arranges 10–15 sales each year of boats stored in its slips.*

The Department of Revenue assessed petitioner sales tax on the sales of these boats on the theory that petitioner was the "seller" of the boats, as defined in 144.010.1(9), RSMo.

Petitioner entered into written agreements with boat owners to arrange sale of these boats for a commission. Petitioner's responsibilities regarding these sales included publishing lists of boats for sale and showing the boats. In nearly every case, payment was made directly from the buyer to the boat owner. Petitioner never held title to the boat.

The Administrative Hearing Commission held petitioner did not act as a seller of the boats, as it did not direct who was to receive title and took physical control of the boats only when directed and then only as an agent of the owner.

***Barter Systems International v. Director of Revenue**, Case No. RS-84-2357 (A.H.C. 11/9/88). The taxpayer operated as one part of its business an exchange for its member clients to barter goods and services with one another. The member-to-member trades did not involve cash, only goods and services. The taxpayer acted as a conduit between members. It notified one member when another member had some item to trade and kept records of the transactions. The selling member set the price and was responsible for remitting sales tax to the department. Taxpayer did not police the price of the goods exchanged.*

*The Administrative Hearing Commission concluded that the taxpayer operated a business which regularly bought and sold goods in the showroom. The taxpayer purchased goods using the clients' assets' accounts. The buying of goods using its own funds consisting of clients' assets' accounts and selling them to the customer on its own terms constituted two separate transactions, one between petitioner and the original supplier and one between petitioner and its customers. The Administrative Hearing Commission concluded that the two separate transactions could not be collapsed into one by describing petitioner as merely a conduit between its buyer and a customer (see **Martin Coin Co. of St. Louis v. King**, 665 SW2d 939 (Mo. banc 1984)).*

***H. Matt Dillon, d/b/a Midwest Home Satellite Systems v. Director of Revenue**, Case No. RS-85-1741 (A.H.C. 12/9/88). The Administrative Hearing Commission found that sellers must obtain signatures on each individual invoice or written acknowledgement that a purchase is being made under an exemption certificate or letter if the certificate is not presented anew for each transaction; auctioneers acting for undisclosed principals are subject to sales tax as the seller of tangible personal property; and that auctioneers acting for disclosed principals must maintain satisfactory evidence of that fact.*

12 CSR 10-3.014 Auctions Disclosed Principal

(Rescinded September 11, 1983)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 28 Jan. 22, 1973, effective Feb. 1, 1973, S.T. regulation 010-6 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 29, 1983, effective Sept. 11, 1983.

12 CSR 10-3.016 Consignment Sales

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1986, S.T. regulation 010-6A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 6, 1980, effective Dec. 11, 1980.

12 CSR 10-3.017 Ticket Sales

PURPOSE: This rule clarifies what sales tax is required to be paid and collected on the sale of tickets. Applicable sales taxes are enumerated and the method of determining the tax due is specified. This rule interprets and applies sections 144.010.1(3), 144.020 and 144.080.5, RSMo.

(1) All tickets sold to permit admission to any theater, sporting event, exhibit or any other event where sales tax is required to be paid and collected must contain a statement on the face of the ticket "This ticket is subject to a four percent (4%) sales tax," as provided in section 144.020.2, RSMo.

(2) All tickets stating a single amount as the price for the ticket and containing the statement set forth in section (1) shall be subject to the sales tax on the single amount so stated and the tax rate shall be applied against that amount.

(3) If the total selling price of a ticket is intended to include state and local sales tax, the vendor must advise the purchaser of the cost of admission and the amount of tax by printing these amounts on the ticket, by posting a prominently displayed sign stating that amount or by giving other written notice.

(A) The ticket or notice must contain the following language:

Cost of admission	$(amount)
Sales tax	$(amount)
Ticket price	$(amount)

(B) Otherwise, the vendor shall be subject to sales tax on all receipts and the total price of the tickets shall be considered receipts.

(4) All ticket sales are also subject to all applicable local sales taxes and all special purpose state sales taxes, which may now be or become applicable to these sales. The seller may include an additional statement that the ticket is subject to all applicable sales taxes, both state and local.

(5) If the cost of admission and the applicable sales tax is not separately stated to the purchaser, as set out in section (3), the vendor shall be subject to sales tax on all receipts and the total price of the tickets shall be considered taxable receipts.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Dec. 5, 1983, effective March 11, 1984. Amended: Filed Oct. 15, 1984, effective Feb. 11, 1985.*

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

12 CSR 10-3.018 Truckers Engaged in Retail Business

PURPOSE: This rule interprets the sales tax law as it applies to truckers engaged in retail

business and interprets and applies section 144.010, RSMo.

(1) Truckers and haulers selling tangible personal property such as vegetables, fruits and building supplies are making retail sales and are subject to the sales tax on the gross receipts from these sales even though the time intervals between sales activities are considerable.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 48 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.020 Finance Charges

PURPOSE: This rule interprets the sales tax law as it applies to finance charges and interprets and applies sections 144.010 and 144.020, RSMo.

(1) Finance charges are not subject to the sales tax if clearly segregated and separately stated from the tangible personal property on the billing or invoice. Accurate records must be maintained. If finance charges become a part of, or are incorporated into, the agreed purchase or selling price, they are subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-8 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

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

*In **Kurtz Concrete, Inc. v. Spradling**, 560 SW2d 858 (Mo. banc 1978), the court held while title ordinarily will not pass until property is delivered to buyer or reaches agreed place but title will pass notwithstanding that seller is to make delivery if that is the intention of the parties, the intention of the parties to control.*

12 CSR 10-3.022 Cash and Trade Discounts

PURPOSE: This rule interprets the sales tax law as it applies to cash and trade discounts, and interprets and applies section 144.010, RSMo.

(1) Sellers who offer cash discounts for timely payment of an invoice must state that the discount is on the combined total of the regular price plus the sales tax. If the discount is only computed on the selling price and the seller does not refund the sales tax on the discount allowed, the tax not refunded is considered gross receipts subject to the sales tax.

(2) Persons who offer trade and volume discounts must deduct the discount prior to computing the sales tax.

(3) Example 1: Handy Hardware offers its credit customers a two percent (2%) discount on invoices paid within ten (10) days. Handy Hardware should tell their customers to compute the discount on the invoice total, including sales tax, when paying within ten (10) days. If a customer, Mr. Drake, only computes the discount on the sales price and Handy Hardware does not refund the tax on the discount allowed to its customer, Handy Hardware must include this amount in its gross receipts.

(4) Example 2: Handy Hardware also offers Mr. Drake, a special customer, a ten percent (10%) discount when fifty (50) units are purchased. In figuring the invoice on these purchases, Handy Hardware must compute the sales tax on the purchase price less the discount to which Mr. Drake is entitled.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-8A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.023 Rebates

PURPOSE: This rule clarifies the sales tax obligation as it applies to the purchase of motor vehicles with rebates.

(1) On all sales occurring on or after August 28, 1994, rebates offered by a motor vehicle dealer or manufacturer may be used as a credit to reduce the amount of sales tax due by a purchaser upon titling a vehicle. A bill of sale or other record showing the actual rebate given by the seller or manufacturer must be provided. The purchase price on the Purchase Price line of the title application should include all receipts that the dealer received less any rebates given by the dealer as a result of the sale of a motor vehicle.

(2) Example: Mr. Smith buys a new car from XYZ Motors carrying a sales tag of twenty thousand five hundred dollars ($20,500). He receives a trade-in allowance on his car for two thousand dollars ($2000) and a rebate of five hundred dollars ($500). Mr. Smith would pay the sales tax on eighteen thousand dollars ($18,000), the purchase price of the new car.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 10, 1986, effective April 25, 1986. Emergency amendment filed Aug. 18, 1994, effective Aug. 21, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995.*

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

12 CSR 10-3.024 Returned Goods

PURPOSE: This rule interprets the sales tax law as it applies to returned goods and interprets and applies sections 144.010 and 144.025, RSMo.

(1) When a purchaser returns tangible personal property to the seller and obtains a full or partial refund of the purchase price, the seller also shall return to the purchaser all sales tax collected on the refunded amount. If the seller previously had included the total gross receipts in a sales tax return filed with the Department of Revenue and paid the sales tax on the gross receipts, s/he should take deduction on his/her next sales tax return for the amount of the purchase price refunded.

AUTHORITY: section 144.270, RSMo. 1994. S.T. regulation 010-9 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.026 Leases or Rentals Outside Missouri
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 010-9A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.027 Quarter-Monthly Period Reporting and Remitting Sales Tax
(Moved to 12 CSR 10-3.626)

12 CSR 10-3.028 Construction Contractors

PURPOSE: This rule interprets the sales tax law as it applies to construction contractors and interprets and applies section 144.010, RSMo.

(1) The term contractor, as referred to in these rules, means any person entering into an agreement to improve, repair, replace, erect or alter real property. Contractors are considered to be the final purchasers and consumers of the materials and supplies which are used in fulfilling a construction contract and which enter into and become part of the completed project. As a consequence, persons selling materials and supplies to contractors are subject to sales tax on the gross receipts from all such sales.

(2) The term contractor does not include any person selling carpet, drapes, sod or other items when title to the property passes to the purchaser prior to being commingled with and becoming a part of the real property.

(3) Sellers of materials and supplies to owners of real property to be used by the owners, their agents or independent contractors in erecting, altering, improving or repairing buildings or other improvements are subject to the sales tax.

(4) When a person sells to a contractor materials or supplies fulfilling his/her contract with that general or prime contractor, the sales are subject to these sales tax.

(5) Example 1: Beaver Construction Company enters into an agreement to erect an elementary school for a school district. The company purchases supplies and materials to erect the school building in the fulfillment of the contract. Sellers of materials and supplies to the contractor, Beaver Construction, are subject to the sales tax since Beaver Construction is the consumer of these supplies and materials.

(6) Example 2: Beaver Construction Company purchases materials to construct a silo on real property (the silo is a building or structure) for a lump-sum contract price. All suppliers to Beaver Construction are subject to sales tax on the materials incorporated into the silo.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule nos. 18 and 25 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-10 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***State ex rel. Otis Elevator Co. v. Smith**, 212 SW2d 580 (Mo. banc 1948). Otis Elevator Company was in the business of designing, constructing, installing and repairing elevators in buildings. Respondent claimed there was no sales tax due to petitioner Smith because the materials used to construct new elevators or to modify existing elevators lost their character or status as tangible personal property and became a part of the real property coincidently with their delivery and attachment to the building. Respondent kept a title retention clause in his contract with the building contractor allowing him to retain title to the elevator until he was paid in full and if not, to remove the elevator. Judge Ellison held this clause prevented the tangible personal property from being joined with the realty. Absent this contractual clause, the court would have reached a different conclusion.*

Where the contract for installation of new elevators, and reconstruction or major repairs to existing elevators whereby elevator company retains title to materials until paid, the elevator company is liable for sales tax. Had the contract not contained the title retentions clause the elevator company would not be liable for sales tax.

*Where elevator company does repair work on existing elevators and supplies small parts which become part of the elevator, and does not retain title to the parts, the company is not subject to sales tax. The parts become part of the realty (see **Air Comfort Service, Inc. v. Director of Revenue**, Case No.RS-83-1982 (A.H.C. 4/25/84) and **Marsh v. Spradling**, 402 SW2d 537 (Mo. banc 1976)).*

***State ex rel. Thompson-Stearns-Roger v. Schaffner**, 489 SW2d 207 (Mo. banc 1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.*

*In **Marsh v. Spradling**, 537 SW2d 402 (Mo. banc 1976), where the installation of the cabinets was an integral part of the contract for sale, the cabinets installed by contractor became part of the real estate under the doctrine of fixtures. The time of transfer of title was upon transfer of the real estate and no transfer of tangible personal property subject to the sales tax law occurred.*

***United States v. New Mexico**, 455 U.S. 720, 102 S.Ct. 1373 (1982). New Mexico's sales tax was not invalid as applied to purchases made by contractors having contracts with the federal government for construction and repair work on government-owned property, even where title passed directly from vendors to the federal government.*

***Bath Antiques v. Director of Revenue**, Case No. RS-80-0161 (A.H.C.8/17/82). Sales between parent corporations and subsidiary corporations are not exempt "interdepartmental transfers"as defined in 12 CSR 10-3.140(1). They are taxable sales.*

***Overland Steel, Inc. v. Director of Revenue**, 647 SW2d 535 (Mo. banc 1983). There were two issues in this case. The first was whether a taxpayer could claim a sales tax exemption for certain steel if sold, on the grounds that the purchasers were to use it in pollution control or plant expansion projects. The second was whether or not the transfer of steel to certain customers in Kansas was a sale subject to sales tax under the Commerce Clause of the **United States Constitution**. With respect to the first issue, the court found that the taxpayer had the burden of establishing that it was exempt from sales tax, and its failure to produce sales tax exemption certificates, coupled with the dearth of testimony concerning the exempt activities of taxpayer, fails to meet that burden. With respect to the second issue, the court found that when property is purchased subject to a resale certificate, the purchaser becomes liable for sales tax if the property is not resold. In this case the court found that because the taxpayer used the steel in question in its capacity as a contractor there was no resale. Therefore, the taxable event was the taxpayer's original purchase of the steel in Missouri. It was wholly irrelevant that the construction contract pursuant to which the steel was used was performed in Kansas. There was no violation of the Commerce Clause, and therefore, taxpayer was liable for tax.*

***Air Comfort Service, Inc. v. Department of Revenue**, Case No. RS-83-1982 (A.H.C. 4/25/84). The issue in this case as whether the mark-up which a heating and air conditioning contractor collected on replacement parts it installed was subject to sales tax. None of the parts were of such a nature that removal of the defective parts would cause substantial damage to the freehold. At issue were belts, switches, freon and certain motors. The taxpayer's position was that the parts in question became a fixture upon installation. This would result in the sales falling under the rule for contractor's materials under which the contractor is the final purchaser and consumer of the personal property (and therefore the mark-up would not be taxable).*

*The commission found the determinative factor to be the point at which title passes. The court looked to the three-part test set out in **Marsh v. Spradling**, 537 SW2d 403 (Mo. banc 1976). Those elements are: 1) physical annexation to the freehold, 2) the adaption of the article to the location and 3) the intent of the annexor at the time of the annexation. The commission first found that parts (1) and (2) of the Marsh test were met because the parts were physically annexed to and adapted to the freehold. The commission then looked to **State ex rel. Otis Elevator Co. v. Smith**, 212 SW2d 580 (Mo. banc 1948) and concluded that the third test (the intent of the annexor at the time of annexation) had been met. In that case, because the elevator company had not retained title to the materials in question, it was found that the annexor intended the article to be adapted to and annexed to the freehold at the time of installation. The property in question was therefore part of the contract and the mark-up thereon was not taxable. In the case at hand, the heating and air conditioning company had not kept title to the property, and therefore the contractor's mark-up was not subject to sales tax.*

***Planned Systems Interiors, Ltd. v. Director of Revenue**, Case No.RS-85-0065 (A.H.C. 7/1/86). The petitioner's theory was that it was making a sale to an agency of the United States government and could not be required to pay sales tax.*

The Administrative Hearing Commission rejected petitioner's contentions and found that the taxpayer had a contractual relationship only as a subcontract with K & S, the primary contractor and that the taxpayer sold the workstations to K & S pursuant to their contract. Under the department's regulations 12 CSR 10-3.028 and 12 CSR 10-3.262, this sale was subject to sales tax.

***Broski Brothers, Inc. v. Director of Revenue**, Case No. RS-85-0063 (A.H.C.1/30/87). The Administrative Hearing Commission followed **Overland Steel, Inc. v. Director of Revenue**, 647 SW2d 535 (Mo. banc 1983) by ruling that a dual operator's purchases of inventory materials from Missouri suppliers for delivery in Missouri but subsequently removed for use in out-of-state construction jobs are subject to Missouri sales tax. This is true even though the out-of-state construction jobs may be exempt from sales tax in that out-of-state jurisdiction.*

***Builders Glass & Products Co. v. Director of Revenue**, Case No. RS-85-0453 (A.H.C. 5/13/87). The assessments at issue dealt with transactions between Builders Glass & Products and various sales tax exempt religious and charitable organizations. The Administrative Hearing Commission found that the petitioner as a contractor should have paid sales tax on its purchases of supplies and materials used in completing its contracts. Therefore, the Department of Revenue did properly impulse tax upon the purchase by petitioner of materials used and consumed by it as a contractor and the tax was properly collectable directly from the taxpayer who had purchased the materials under an improper claim of exemption.*

***Becker Electric Company, Inc. v. Director of Revenue**, 749 SW2d 403 (Mo. banc 1988). A purchaser was determined to be the person who acquires title to, or ownership of, tangible personal property, or to whom is tendered services, in exchange for a valuable consideration. Becker was not the purchaser here because the materials were billed to the Housing Authority and the consideration was paid by the Housing Authority. If the materials are billed to the exempt organization and paid for from funds of the exempt organization, then the purchase is exempt if the materials are used in furtherance of the exempt purpose of the organization.*

12 CSR 10-3.030 Construction Aggregate

PURPOSE: This rule interprets the sales tax law as it applies to construction aggregate and interprets and applies sections 144.010 and 144.020, RSMo.

(1) When a contractor produces his/her own aggregate, rock, sand and the like, which is used in the fulfillment of his/her own contract, the aggregate is not subject to the sales tax. If the aggregate is sold to another person or to a contractor who acquires the material for use in the fulfillment of a contract, the aggregate is subject to the sales tax.

(2) Example 1: A general or prime contractor uses rock from his/her own quarry to fulfill the requirements of his/her contract to build a road. The rock is not subject to the sales tax.

(3) Example 2: A general or prime contractor sublets to a subcontractor that the subcontractor is to furnish and stockpile rock at a specified price. The rock is to be used by the general or prime contractor in the paving of a road. The aggregate is subject to the sales tax.

(4) Example 3: A contractor who operates his/her own quarry sells crushed rock to an individual for use on his/her driveway. The contractor is subject to the sales tax on the receipts from the sale of the crushed rock.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 18 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-11 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

*In **Marsh v. Spradling**, 537 SW2d 402 (Mo. banc 1976), where the installation of the cabinets was an integral part of the contract for sale, the cabinets installed by the contractor became part of the real estate under the doctrine of fixtures. The time of transfer of title was upon transfer of the real estate and no transfer of tangible personal property subject to the sales tax law occurred.*

12 CSR 10-3.031 Dual Operators

PURPOSE: This rule indicates when a contractor is considered a dual operator and sets forth the procedures to be used by the dual operator to determine when purchases become subject to sales tax. Examples are given for clarification purposes.

(1) A contractor who purchases materials and supplies from a Missouri vendor for both consumption and for resale is operating as a dual operator. A dual operator shall adopt the following procedures:

(A) For items which the contractor purchases solely for use in his/her operation as a contractor, the seller is subject to sales tax; and

(B) For items which the contractor purchases for both consumption and resale, the contractor may present an exemption certificate to the seller for all items purchased. Subsequently, when those items are removed from the contractor's inventory for his/her use, the contractor should pay sales tax. On those items which are resold from inventory, the contractor is acting as the seller and should collect and remit sales tax.

(2) Example: Alex Contracting purchases hammers and other small tools from Peach Corporation for use in their construction business. Alex Contracting should purchase these items subject to the sales tax.

(3) Example: Alex Contracting purchases large quantities of ceiling tiles from Peach Corporation, a Missouri company, for use in contracting jobs and resale. Alex Contracting should give Peach Corporation an exemption certificate and upon removing any of the inventory of tiles for a job, Alex Contracting should self-accrue sales tax upon the amount of tile withdrawn. If Alex Contracting withdraws tile from the inventory and sells it to Joe Subcontractor, Alex Contracting is subject to sales tax upon the gross receipts.

(4) Example: As part of a specific Missouri contract, Alex Contracting purchases steel from Stanley Structural Steel Company, an out-of-state company. Stanley Structural Steel does not charge use tax, therefore, Alex Contracting must pay Missouri use tax on those purchases.

(5) Example: Alex Contracting purchases large quantities of structural steel from Stanley Structural Steel, an out-of-state company, for use in contracting jobs and for resale. Alex Contracting should give Stanley Structural Steel an exemption certificate and upon removing any of the inventory of structural steel for a contract, Alex Contracting is subject to use tax upon the amount of structural steel withdrawn. If Alex Contracting withdraws structural steel from inventory and sells it to Joe Subcontractor, Alex Contracting is subject to sales tax on the gross receipts.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 15, 1985, effective March 24, 1986.*

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

12 CSR 10-3.032 Fabrication or Processing of Tangible Personal Property

PURPOSE: This rule interprets the sales tax law as it applies to the fabrication or processing of tangible personal property and interprets and applies sections 144.010 and 144.020, RSMo.

(1) Sellers of materials and supplies to a manufacturer, producer, compounder, fabricator, processor or other person which is to be used in fabricating any tangible personal property, such as machinery or equipment, for their own use are subject to the sales tax on the total price of the materials and supplies sold. Contractors who fabricate property which they use in the construction of a building are considered to be the final users and consumers of the materials and supplies which are incorporated into the fabricated product.

(2) A person who purchases material and supplies for use in fabrication of tangible personal property for others is subject to sales tax on the full sales price of the completed or fabricated product.

(3) Example 1: The Torch Welding Company is engaged in the principal business of repair welding. As a sideline the company fabricates and sells barbecue grills. The Torch Welding Company is subject to the sales tax on the total sale price of the barbecue grills which it sells. If the company fabricates a rack to hold steel tubing which it uses in its shops, it is considered to be the final user and consumer of the materials and supplies which are incorporated into the fabricated rack.

(4) Example 2: The Big Red Construction Company fabricates roof trusses for its own use in constructing a barn. The company is considered to be the final user and consumer of all materials and supplies which are incorporated into the roof truss.

(5) Example 3: The Short Company fabricates steel trusses for the Big Red Construction Company which will use the trusses in the construction of a bridge. The Short Company is subject to the sales tax on the total price of the steel trusses which it fabricates for the Big Red Construction Company.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-12 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.034 Modular or Sectional Homes

PURPOSE: This rule interprets the sales tax law as it applies to modular or sectional homes and interprets and applies sections 144.010, 144.020 and 700.110, RSMo.

(1) A manufacturer or dealer who enters into a single contract with the customer which calls for the manufacturer or dealer to sell and install a modular or a sectional home on the premises of the customer is considered a construction contractor if the modular or sectional home is incorporated into the realty of the customer before the title passes. This manufacturer or dealer is considered to be the final user and consumer of the materials and supplies which are incorporated into the real estate under the contract.

(2) A manufacturer or dealer who merely sells a modular or sectional home to a customer but does not at the same time agree to install the home or incorporate it into the realty of the customer is considered a retailer and is required to remit sales tax on the entire sale price of the modular or sectional home.

(3) A manufacturer or dealer who sells a modular or sectional home to a customer and enters into a separate agreement to install the home or to incorporate it into the realty of the customer or of a third person is considered a retailer of the modular or sectional home and s/he is subject to the sales tax on the total sale price of the modular or sectional home excluding any separately stated installation charges.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 91 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-13 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***State ex rel. Otis Elevator Co. v. Smith**, 212 SW2d 580 (Mo. banc 1948). Otis Elevator Company was in the business of designing, constructing, installing and repairing elevators in buildings. Respondent claimed there was no sales tax due to petitioner Smith because the materials used to construct new elevators or to modify existing elevators lost*

their character or status as tangible personal property and became a part of the real property coincidently with their delivery and attachment to the building. Respondent kept a title retention clause in his contract with the building contractor allowing him to retain title to the elevator until he was paid in full and if not, to remove the elevator. Judge Ellison held this clause prevented the tangible personal property from being joined with the realty. Absent this contractual clause, the court would have reached a different conclusion.

Where the contract for installation of new elevators, and reconstruction or major repairs to existing elevators whereby elevator company retains title to materials until paid, the elevator company is liable for sales tax. Had the contract not contained the title retentions clause, the elevator company would not be liable for sales tax.

Where an elevator company does repair work on existing elevators and supplies small parts which become part of the elevator, and does not retain title to the parts, the company is not subject to sales tax. The parts become part of the realty (see ***Air Comfort Service, Inc. v. Director of Revenue****, Case No.RS-83-1982 (A.H.C. 4/25/84) and* ***Marsh v. Spradling****, 402 SW2d 537 (Mo. banc 1976)).*

Marsh v. Spradling*, 537 SW2d 402 (Mo. banc 1976). Appellant cabinet maker constructed wooden kitchen cabinets at his own shop and installed them in homes under construction. The Department of Revenue sought to collect sales tax on the sales of the cabinets as tangible personal property. Since installation of the cabinets was an integral part of the contract for sale, the cabinets became part of the real estate under the doctrine of fixtures. The time of transfer of title was upon transfer of the real estate and no transfer of tangible personal property subject to the sales tax law occurred.*

12 CSR 10-3.036 Sales Made by Employers to Employees

PURPOSE: This rule interprets the sales tax law as it applies to sales made by employers to employees and interprets and applies section 144.020, RSMo.

(1) Where an employer provides meals to his/her employees in exchange for cash, services or other valuable consideration, the employer is subject to sales tax on the total amount of cash or other consideration received.

(2) An employer who provides free meals to his/her employees should not purchase the foodstuffs under a resale exemption and should remit sales tax on the cost of the items which become an ingredient or component part of the free meals.

(3) For special circumstances in which employee meals would not be taxed, see *State ex. rel. Denny's, Inc. vs. Goldberg,* 578 SW2d 925 (Mo. banc 1979).

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 43 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-14 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

State ex rel Denny's, Inc. v. Goldberg*, 578 SW2d 925 (Mo. banc 1979). Appellant restaurant franchise provided free meals for its employees on a per-hour-worked basis. The cost of the free meals was included as part of the restaurant's total food cost, and that total food cost was used to set the menu prices, on which retail sales tax was charged. The Department of Revenue sought to collect sales tax on the employee's free meals, using the FICA tax valuation of the meals as a fair value for state tax purposes. Since, under the cost scheme employed by the appellant, such a burden would constitute a double sales tax and there is no evidence that the legislature intended such a result, the Department of Revenue may not collect sales tax on the free meals.*

12 CSR 10-3.038 Promotional Gifts and Premiums

PURPOSE: This rule interprets the sales tax law as it applies to promotional gifts and premiums, and interprets and applies sections 144.010, 144.020 and 144.021, RSMo.

(1) A seller who uses merchandise for advertising or promotional purposes by giving away the merchandise should not purchase the property under a resale exemption and should pay sales tax on the price paid for the merchandise at the time required.

(2) Sellers of tangible personal property to persons who purchase the tangible personal property for the purpose of giving it away as prizes, premiums, gifts or donations or by any other means are subject to the sales tax on the gross receipts from all these sales.

(3) Example 1: An appliance store holds a skill contest, the prize being a new five hundred dollar ($500) retail value color television. The color television was purchased under a resale exemption certificate for two hundred fifty dollars ($250). The appliance store should pay sales tax on the two hundred fifty dollars ($250), the actual cost of the color television.

(4) Example 2: The State Bank holds a promotion to increase savings account additions and new accounts. The promotion consists of giving away clock radios and hair dryers for a certain increase of an existing account or the opening of a new account. The sellers of the clock radios and hair dryers are subject to the sales tax on the sales to the State Bank.

(5) Example 3: A bank purchases balloons and candy to be dispensed to children on the bank premises. The bank must pay sales tax on the cost of the items it buys.

(6) Example 4: John conducts a dart throwing booth at carnivals and other amusement events and he gives out prizes to contestants who score a stated number of points. John must pay sales tax on the cost of the prizes he buys.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-15 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

Mid-America Enterprises, Inc.,d/b/a Worlds of Fun v. Director of Revenue*, Case No. RS-84-0022 (A.H.C. 12/31/86). Petitioner argued that collection of sales and use tax on its purchases of prizes constituted double or even triple taxation because it was currently collecting and remitting sales tax on its gate admissions and was also collecting sales tax on receipts received from customers playing a particular game. In response to this argument, the commission held that the charge and amount paid for admission and receipts from the individual games were separate and distinct incidents of taxation under 144.020.1(2), RSMo and were taxable as fees paid to or in places of amusement, entertainment of recreation. Petitioner's purchases of prizes for the purpose of inducing or enticing prospective participants to play its games was a third incident of taxation as a retail sale of*

tangible personal property under 144.020.1(1), RSMo because petitioner was purchasing the stuffed animals and novelty items for its use and consumption in the course of operating its amusement park.

12 CSR 10-3.040 Premiums and Gifts
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-16 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 6, 1980, effective Dec. 11, 1980.

12 CSR 10-3.042 State or Federal Concessionaires

PURPOSE: This rule interprets the sales tax law as it applies to state or federal concessionaires and interprets and applies sections 144.010, 144.020 and 144.021, RSMo.

(1) When persons are permitted by the state of Missouri or the United States government to operate concessions within state or federal areas, the concessionaires are subject to sales tax.

(2) Example 1: The Missouri State Park Board permits Ms. Smith to operate a concession in a state park. Ms. Smith uses her capital and pays a percentage of net profit to the state for the use of the concession. Ms. Smith is subject to the sales tax on all sales.

(3) Example 2: The Army and Air Force Exchange permits Ms. Kernel to operate a concession in a post exchange. Ms. Kernel is subject to the sales tax on all sales even if sales are made to military personnel only.

AUTHORITY: section 144.270, RSMo (1994). S.T. regulation 010-17 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.044 Labor or Services Rendered

PURPOSE: This rules interprets the sales tax law as it applies to labor services rendered and interprets and applies sections 144.010 and 144.020, RSMo.

(1) Labor charges are taxable if they become part of, or are incorporated into, the agreed purchase or selling price of the property. Labor charges are not taxable if they are separately stated on the billing invoice.

(A) Example: Mr. Jones operates a garage. He repairs a car for his customer and charges one hundred dollars ($100). On his customer's invoice Mr. Jones separately states the parts at seventy-five dollars ($75) and labor at twenty-five dollars ($25). The twenty-five dollar ($25) labor charge is not taxable.

(2) No deductions are allowed to the seller for labor which is part of the production cost of any property later sold at retail. The cost of doing business, such as raw materials consumed, labor to assemble and the like, under no circumstances is deductible.

(A) Example: Mr. Stitch, a tailor, contracts for the sale of a suit of clothes at seventy-five dollars ($75). The seventy-five dollars ($75) represents twenty-five dollars ($25) in materials and fifty dollars ($50) separately stated labor charges. The entire seventy-five dollars ($75) is to be included in Mr. Stitch's gross receipts subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 17 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-18 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

*In **Kurtz Concrete, Inc. v. Spradling**, 560 SW2d 858 (Mo. banc 1978), the court held while title ordinarily will not pass until property is delivered to buyer or reaches the agreed place, but title will pass notwithstanding that seller is to make delivery if such is the intention of the parties, the intention of the parties to control.*

***Signs by Sherri v. Director of Revenue**, Case No. RS-84-2142 (A.H.C. 3/5/87). In this sales tax case, the taxpayer was a sign painter, and argued that it provided a nontaxable service. The Administrative Hearing Commission found that the taxpayer was selling tangible personal property and was therefore subject to sales tax. In making this decision, the Administrative Hearing Commission utilized the true object test. This test examines the real object sought by the buyer, that is, whether it was the buyer's object to obtain an act personally done by an individual as an economic service involving either intellectual or manual effort of an individual, or if it was the buyer's object to obtain only the salable end product of some individual skill. Here, the Administrative Hearing Commission determined that the taxpayer's customers sought to obtain the finished end product, that is, signs, and therefore the transactions were subject to sales tax.*

***Capital Automated Ticket Services, Inc. v. Director of Revenue**, Case No. RS-84-1813 and RS-85-1778 (A.H.C. 9/12/88). The issue in this case considered whether sales tax could be imposed on service charges levied by the petitioner as a fee on the purchase of tickets to various events. The Administrative Hearing Commission determined that the service charges were a nontaxable service and not a fee charged for admission to a place of amusement.*

12 CSR 10-3.046 Caterers and Mandatory Gratuities

PURPOSE: This rule interprets the sales tax law as it applies to caterers and mandatory gratuities, and interprets and applies section 144.010, RSMo.

(1) Caterers are retail merchants or sellers purchasing raw materials from various suppliers from which finished food, meals and drink are prepared and sold at retail. Caterers are subject to sales tax on their gross receipts including labor, services or so-called mandatory gratuities which are a part of these sales.

(2) Mandatory gratuities are considered to be a necessary part of the sale when charged by restaurants or others and are subject to the sales tax even when the charges are separately stated to the customer.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-19 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

***Penn Corp. v. Director of Revenue**, Cole County Circuit Court No. 2994 (March 1980). The court held the taxpayer must include mandatory gratuities in the gross receipts for purposes of payment of sales tax.*

12 CSR 10-3.048 Clubs and Other Organizations Operating Places of Amusement

PURPOSE: This rule interprets the sales tax law as it applies to clubs and other organizations operating places of amusement and clarifies the circumstances under which fees and charges paid to clubs are subject to sales tax.

(1) Definitions.

(A) Club is an organization or group of people associated for a common purpose or for mutual advantage, relating to a place of amusement, entertainment or recreation.

(B) Business is an activity engaged in by any person or caused to be engaged in by him/her with the object of gain, benefit or advantage, either direct or indirect, except as otherwise provided in this rule (see section 144.010.1(2), RSMo).

(C) Not-for-profit organization is an organization, including a not-for-profit corporation, no part of the income or property of which is distributable to its members, directors or officers; provided, however, that payment of reasonable compensation for services rendered and the making of distributions not representing pecuniary profits or gains upon dissolution or final liquidation are not deemed a distribution of income or property.

(D) For-profit organization is any organization which does not qualify as a not-for-profit organization.

(E) Place of amusement is any location in which amusement activities comprise more than a *de minimus* portion of the business activities of the location and includes, but is not limited to, clubs (see *St. Louis Country Club v. Administrative Hearing Commission*, 657 SW2d 614 (Mo. banc 1983), *Spudich v. Director of Revenue*, 745 SW2d 677 (Mo. banc 1988) and *Soccer World West, Inc. v. Director of Revenue*, A.H.C. No. 90-001797RS (1989)).

(F) Amusement is a pleasurable diversion or entertainment (see *Spudich v. Director of Revenue*, 745 SW2d 677 (Mo. banc 1988)).

(G) Homeowners' association is a not-for-profit organization whose membership is limited to residential property owners or tenants in a specified development, subdivision or area, which provides services for the betterment of the development, subdivision or area or for the benefit of the property owners or their tenants.

(2) All fees or charges, including fees or charges paid for admission and seating accommodations, paid to or in any place of amusement, entertainment, recreation, games or athletic events, are subject to sales tax when operated by for-profit and not-for-profit organizations as business activities.

(3) Amounts paid in or to a not-for-profit organization by members for the sole purpose of obtaining initial membership rights to participate in the ownership, operation and control of the club are not subject to tax. All amounts periodically paid in or to a not-for-profit organization by members for any purpose other than obtaining initial membership rights are a business activity and are subject to tax. All operating assessments or operating fees are taxable. Any other assessment or fee charged by an existing club solely to build or create a new place of amusement or a real-property addition to a place of amusement is not a fee in or to a place of amusement and is not subject to sales tax.

(4) Amounts paid by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities are not subject to sales tax (see section 144.030.2(19), RSMo).

(5) Amounts paid by or to not-for-profit civic, social, service or fraternal organizations solely in their civic or charitable functions and activities are not subject to sales tax. All other fees or charges paid into a place of amusement operated by a not-for-profit civic, social, service or fraternal organization are subject to sales tax. Amounts paid to national or state parent organizations of not-for-profit civic, social, service or fraternal organizations are not subject to sales tax. Other amounts paid to these local organizations are subject to sales tax if the amount authorizes admission, seating accommodations or access to a place of amusement (see section 144.030.2(20), RSMo).

(6) Amounts paid in or to a place of amusement by members or by members on behalf of their guests are subject to sales tax unless otherwise exempt.

(A) Example: A club charges a member a specific amount each time a facility such as a driving range is used or for an activity such as a dance. Unless otherwise exempt, this amount is subject to sales tax (see section 144.020.1(2), RSMo, *St. Louis Country Club v. Administrative Hearing Commission*, 657 SW2d 614 (Mo. banc 1983) and *Soccer World West, Inc. v. Director of Revenue*, A.H.C. No. 90-001797RS (1990)).

(7) If a club regularly serves food and beverages to the public, all sales are subject to sales tax on the amount of gross receipts. If a club does not regularly serve food and beverages to the public, other than its members and their guests, and the club acts as a cooperative association for the benefit of its members, the club has the option of either collecting and remitting sales tax on its sales to members and guests or paying sales tax on the club's purchases of food and beverages (see section 144.020.1(6), RSMo).

(8) Involuntary or mandatory gratuities or service charges on food or beverage sales at clubs retain the same character as the underlying sale of food and beverage.

(A) Example: A service charge of twenty percent (20%) is added to all food and beverage sales of a club. If the sales of food or beverage are not subject to sales tax, then the service charge is likewise not subject to sales tax. If the sale of food or beverage is subject to sales tax, then the service charge is subject to sales tax (see section 144.020.1(6), RSMo).

(9) Amounts paid for lessons, whether within or not within a place of amusement, are not subject to sales tax. Examples of those lessons or other nontaxable activities include dance, karate, gymnastic, piano and singing lessons, haircuts, shoe polishing and child care. Notwithstanding this section, all amounts periodically paid in or to an organization as dues or noninstructional participation fees are subject to tax pursuant to section (3) of this rule.

(10) Amounts paid within a place of amusement for any use of golf carts, golf cart sheds, lockers, massage machines, tanning booths or other equipment or property are subject to sales tax.

(11) If a place of amusement is used by an outside organization which pays all fees within the place of amusement, the treatment of these fees is based on the tax status of the outside organization.

(A) Example: Organization A holds a golf tournament to raise funds. Organization A is a charitable organization and has received a sales tax exemption letter from the Department of Revenue for both its sales and purchases. The tournament fee of fifty dollars ($50) is paid by the organization and includes the golf fees, cart rental and a meal. No sales tax should be collected on the charge made by the club for the use of its facilities and equipment.

(B) In the example in subsection (11)(A), if the club charges the individual participants and not the charitable organization any fee, sales tax should be collected on that fee.

(12) Amounts paid in or to homeowners' associations specifically for admission to or use of amusement, entertainment or recreational facilities or events are subject to sales tax. Amounts paid in or to homeowners' associations for nonentertainment or nonrecreational services, such as subdivision security, street lights, snow removal, insurance, maintenance, utilities or trash removal are not subject to sales tax. If a homeowners' association charges each owner or tenant a set fee which covers operation and maintenance of all recreational and nonrecreational services and facilities, regardless if the owner or tenant makes use of the recreational facilities, the entire amount is not taxable.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously published as rule no. 46 in Rules and Regulations relating to the Missouri Sales Tax Act, 1949. Republished as rule no. 44 in the Missouri Sales Tax Act and Compensating Use Tax Law with Rules and Regulations, 1963. S.T. regulation 010-20 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Feb. 4, 1986, effective June 28, 1986. Emergency amendment filed Nov. 15, 1990, effective Nov. 25, 1990, expired March 24, 1991. Emergency rescission and rule filed Jan. 3, 1991, effective Jan. 13, 1991, expired May 13, 1991. Emergency rescission and rule filed May 3, 1991, effective May 13, 1991, expired Sept. 9, 1991. Rescinded and readopted: Filed Jan. 3, 1991, effective June 10, 1991.*

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

12 CSR 10-3.050 Drinks and Beverages

PURPOSE: This rule interprets the sales tax law as it applies to the sale of drinks and beverages, and interprets and applies sections 144.010 and 144.080, RSMo.

(1) Sales tax applies to the total selling price of drinks and beverages, whether intoxicating or otherwise, unless the business or person selling the drink has a prominently displayed sign separately stating the price of the drink as well as the amount of the applicable sales tax or has an express written notice stating the price of the drink as well as the amount of the applicable sales tax on the menu, ticket, bill or cash register receipt which is supplied to each and every patron.

(2) Example 1: A bar sells mixed drinks for two dollars ($2). There are neither signs in the establishment nor any other written notification supplied to each patron that separately states the price of the drink and the applicable sales tax. The business is subject to sales tax on the two dollars ($2).

(3) Example 2: A bar sells mixed drinks for one dollar and seventy-five cents ($1.75) plus twenty-five cents (25¢) sales tax for a total price of two dollars ($2). The bar has a prominently displayed sign that reads: Mixed drinks one dollar and seventy-five cents ($1.75). The business is subject to sales tax on the one dollar and seventy-five cents ($1.75).

(4) Example 3: A bar sells mixed drinks for two dollars ($2). The bar supplies the patron, simultaneously with the drink, a cash register receipt that reads: Mixed drinks one dollar and seventy-five cents ($1.75) plus twenty-five cents (25¢) sales tax, total two dollars ($2). The business is subject to sales tax on the one dollar and seventy-five cents ($1.75).

(5) Example 4: A restaurant sells mixed drinks for one dollar and seventy-five cents ($1.75) plus twenty-five cents (25¢) sales tax for a total price of two dollars ($2). The restaurant provides to each patron a menu which states: Mixed drinks one dollar and seventy-five cents ($1.75). The restaurant is subject to sales tax on the one dollar and seventy-five cents ($1.75).

(6) Example 5: A restaurant has an attached lounge that sells mixed drinks for two dollars ($2). While the patrons sitting in the restaurant are supplied with a menu which complies with section (5), the lounge patrons are not supplied with any written notification, such as a sign or otherwise, therefore, the restaurant lounge is subject to sales tax on the two dollars ($2).

AUTHORITY: sections 144.270, RSMo 1994. This rule was previously filed as rule no. 66 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-21 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed April 11, 1984, effective Oct. 11, 1984.*

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

12 CSR 10-3.052 Sale of Ice

PURPOSE: This rule interprets the sales tax law as it applies to the sale of ice and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Persons selling ice to other sellers of ice or to sellers of soft drinks for use as a component part of the drink are sales for resale purposes and are not subject to the sales tax when a resale exemption certificate is issued.

(2) Persons selling ice to manufacturers, carriers or any other consumer for the purpose of cooling or keeping perishable items of property or for other uses are subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 45 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-22 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

***P.F.D. Supply Corporation v. Director of Revenue**, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The commissioner, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.*

*Relying on its previous decision in **Blueside Co. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84) the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to **Blueside**, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.*

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme

*Court in **Overland Steel, Inc. v. Director of Revenue**, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the **Overland Steel** case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2), in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.*

Finally, the commission held that non-reusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on such items.

12 CSR 10-3.054 Warehousemen

PURPOSE: This rule interprets the sales tax law as it applies to warehousemen and interprets and applies section 144.010, RSMo.

(1) Warehousemen and others who are primarily engaged in the business of moving, storing, packing and shipping tangible personal property are not subject to sales tax on these services. Persons selling crates, boxes, packaging materials for use or consumption by warehousemen in the performance of these services are subject to the sales tax on the gross receipts from all these sales.

(2) A warehouseman, through indebtedness incurred from services provided by him/her to a customer, may acquire title of tangible personal property through a claim against the customer and may subsequently sell to the public the acquired property. Warehousemen are subject to the sales tax when they offer such acquired property for sale.

(3) Any person selling tangible personal property for the purpose of satisfying a warehouseman's lien, is engaged in the business of selling at retail and is subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 31 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-23 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Floyd Charcoal Co. v. Director of Revenue**, 599 SW2d 173 (Mo. banc 1980). Appellant charcoal company purchased pallets upon which charcoal packages were loaded for sale to its customers and claimed an exemption from the payment of sales tax on its initial purchase of the pallets as being purchases for resale to its customers. The assessment of sales tax was upheld since the charcoal company maintained the practice of crediting the customer's next purchase for each pallet returned to it.*

12 CSR 10-3.056 Retreading Tires
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 42 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-24 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Oct. 15, 1985, effective Jan. 26, 1986. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

***State ex rel. AMF Inc. v. Spradling**, 518 SW2d 58 (Mo. banc 1974). AMF claimed exemptions from sales tax on rental received under leases of the machines in that they were used in manufacturing pursuant to section 144.020.1(8), RSMo (1969). The claimed exemption was denied, as the machinery and the retreading process did not manufacture a raw product from raw materials as contemplated by the statute, but rather served to repair an already existing tire.*

12 CSR 10-3.058 Automotive Refinishers and Painters

PURPOSE: This rule interprets the sales tax law as it applies to automotive refinishers and painters, and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Automotive dealers who refinish vehicles to be sold may purchase paint, body filler and other refinishing materials which become a component part of the vehicles to be sold by issuing their dealer registration number to their suppliers.

(2) Where a person purchases a thinning agent for the paint, it too may be exempt if it becomes an ingredient part of the paint, which in turn becomes an ingredient part of the automobile which is sold at retail. The thinning agent must be used for this purpose to qualify as a deduction. Thinner used as a cleaning compound for cleaning spray guns and other equipment is taxable.

(3) Sellers of rubbing compound, emery cloth, abrasives, sandpaper, spray guns, compressors, paint brushes, polishing cloths, tack cloths and other such supplies and equipment are subject to the sales tax on the gross receipts from these sales.

(4) Suppliers selling paint, wax, polish and other supplies to persons who only provide the service of refinishing automobiles for other persons are subject to the sales tax on all such sales.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 40 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-25 was last filed Dec. 31. 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

12 CSR 10-3.060 Memorial Stones

PURPOSE: This rule interprets the sales tax law as it applies to sellers of memorial stones and interprets and applies sections 144.010 and 144. 021, RSMo.

(1) Sellers of memorial or head stones are selling tangible personal property and the total gross receipts are subject to the sales tax, including any labor for the lettering, cutting or polishing. When a seller of memorial stones installs or agrees to set the stone, and the charges incurred are separately billed from the cost of the stone and other production costs, the labor charges are not subject to the sales tax. If no separation in billing is made, sales tax will be applicable to the entire amount of gross receipts.

(2) Example 1: A seller of memorial stones agrees to provide a stone, print, cut, polish and install for a sum of one hundred eighty dollars ($180); sales tax applies on the full amount of one hundred eighty dollars ($180), which includes the installation costs.

(3) Example 2: A seller of memorial stones agrees to provide a stone, print, cut and polish for a sum of one hundred fifty dollars ($150) and install for thirty dollars ($30). The purchaser's billing clearly identifies the cost of the stone and production of one hundred fifty dollars ($150) as distinguished from a thirty-dollar ($30) installation charge, therefore, the sales tax applies only to one hundred fifty dollars ($150).

(4) Example 3: A seller of memorial stones agrees to provide a stone for one hundred dollars ($100), print, cut and polish for fifty dollars ($50) and install for thirty dollars ($30). The billing clearly identifies these charges. One hundred fifty dollars ($150) is subject to the sales tax but not the thirty-dollar ($30) installation fee.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 83 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-26 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

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

*In **Kurtz Concrete, Inc. v. Spradling**, 560 SW2d 858 (Mo. banc 1978), the court held while title ordinarily will not pass until property is delivered to buyer or reaches agreed place but title will pass notwithstanding that seller is to make delivery if such is the intention of the parties, the intention of the parties to control.*

12 CSR 10-3.062 Maintenance or Service Contracts Without Parts

PURPOSE: This rule interprets the sales tax law as it applies to maintenance contracts without parts and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Persons who offer maintenance or service contracts where maintenance service or repair only is provided for a designated period of time for a charge are not subject to sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 92 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-27 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

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

12 CSR 10-3.064 Maintenance or Service Contracts With Parts

PURPOSE: This rule interprets the sales tax law as it applies to maintenance contracts which include parts.

(1) When persons sell merchandise, such as adding machines, calculators, typewriters, radios, television sets and the like, and offer maintenance or service contracts to their customers in which they agree to maintain, service and repair those items for a designated period of time for an initial lump sum charge, the contracts are not subject to sales tax when the contract charges are separated from the sales price of the merchandise. However, the seller must pay sales tax on all repair parts and other items consumed by him/her in the fulfillment of his/her contract. When the buyer purchases a particular article for a specified sum which includes maintaining or servicing the properties and where no segregation has been made, sales tax becomes applicable on the entire amount of the purchase, including the maintenance or service charge.

(2) When a person sells merchandise, such as adding machines, calculators, typewriters, radios, television sets and the like, and offers maintenance or service contracts to his/her customers in which they agree to maintain, service and repair these items for a designated period of time for an initial lump sum charge and for additional charges for repair parts as needed, the seller must charge sales tax on the repair parts billed to the customer under the contract.

(3) Example 1: P sells a typewriter for three hundred dollars ($300) and a two (2)-year maintenance contract for an additional twenty-five dollars ($25). The maintenance contract is segregated on the billing from the cost of the typewriter. Sales tax is due on the three hundred dollars ($300) but is not due on the twenty-five dollar ($25) maintenance contract.

(4) Example 2: P makes a repair under a maintenance contract on a typewriter which requires a new part. P must pay sales tax on the actual cost of the part.

(5) Example 3: P makes a repair under maintenance contract which requires parts and P bills the customer for the parts. P must collect sales tax on the amount charged for the parts.

(6) Example 4: A car dealer sells an automobile to a buyer which includes as part of the purchase price an initial warranty for certain services including parts. The dealer does not owe sales or use tax on parts supplied pursuant to the initial warranty when the manufacturer provides the parts to the dealer free of charge.

(7) Example 5: A car dealer sells a buyer an extended warranty beyond the initial warranty for services only. The extended warranty contract is not subject to sales tax. If the dealer bills the buyer additional charges for repair parts as needed, the dealer must charge the buyer sales tax on the repair parts.

(8) Example 6: A car dealer sells a buyer an extended warranty for services including parts. The dealer is liable for sales tax on his/her purchase of parts used to fulfill the extended warranty contract.

(9) Example 7: A car dealer sells a buyer an extended warranty reinsured by the manufacturer. The dealer is liable for sales tax on the purchase of parts used to fulfill the warranty contract even though the dealer is reimbursed by the manufacturer.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 92 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-28 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

12 CSR 10-3.066 Delivery, Freight and Transportation Charges—Sales Tax

PURPOSE: This rule interprets the sales tax law as it applies to delivery, freight and transportation charges and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Delivery costs, including postage and transportation costs, are subject to sales tax if

the parties intend for delivery to be part of the sale.

(2) Delivery costs, including postage and transportation costs, are not subject to sales tax if the parties do not intend for delivery to be part of the sale.

(3) Some factors relevant to the determination of the parties' intent are—

(A) When title passes to the purchaser;

(B) Whether delivery charges are separately stated on sales invoices;

(C) Whether the method of delivery is entirely up to the purchaser;

(D) Whether the purchaser has the option to take the tangible personal property, hire a carrier or use a carrier selected by the seller;

(E) Whether the seller derives any financial benefit from the delivery and undertakes any risk for damage or loss during delivery; and

(F) Whether there is a written agreement between the parties.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-29 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded and readopted: Filed Oct. 1, 1993, effective May 9, 1994.*

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

***Kurtz Concrete, Inc. v. James R. Spradling**, 560 SW2d 858 (Mo. banc 1978). The court held while title ordinarily will not pass until property is delivered to buyer or reaches agreed place but title will pass notwithstanding that seller is to make delivery if such is the intention of the parties, the intention of the parties to control.*

12 CSR 10-3.068 Freight and Transportation Charges

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 15 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-30 was last filed Dec. 31, 11975, effective Jan. 10, 1976.Rescinded: Filed Aug. 13, 1980, effective rescinded Dec. 11, 1980.

12 CSR 10-3.070 Service-Oriented Industries

PURPOSE: This rule interprets the sales tax law as it applies to service-oriented industries and interprets and applies sections 144.010, 144.021 and 144.030, RSMo.

(1) Service-oriented industries are generally providing only services which are not subject to the sales tax and are considered consumers of materials and supplies that they use in performing these services.

(2) Suppliers selling materials and supplies which are used, acquired and consumed by service businesses in the normal conduct and performance of their services are subject to the sales tax on the gross receipts from all such sales.

(3) Should a service industry engage in business themselves as retailers selling tangible personal property, they should obtain a Retail Sales Tax License and are subject to the sales tax on their sales. They may purchase items to be sold under an exemption certificate.

(4) Example: Mr. Booty operates a shoe shine parlor. Mr. Booty should purchase his shoe polish, saddle soap and the like subject to sales tax. If, in addition to shining shoes, Mr. Booty sells cans of shoe polish, shoe trees and the like to his customer he should obtain a sales tax license and purchase those latter items under a resale exemption certificate.

(5) Example: Mr. W is engaged in the business of replating metals, such as chromium, onto portions of auto bodies. Mr. W has the option of purchasing the replating metals and chemicals subject to sales tax or of separately stating the costs attributable to the liquid chrome applied to the metal and charging sales tax on that portion. If in addition to replating certain items, Mr. W sells to his customers items which have been already plated or other chemicals or treatments for those metals, he should obtain a sales tax license and purchase these items under an exemption certificate.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 78 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-31 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13. 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed Oct. 15, 1985, effective Jan. 26, 1986.*

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

***K & A Litho Process, Inc. v. Department of Revenue**, 653 SW2d 195 (Mo. banc 1983). The issue in this case was whether the decision of the Administrative Hearing Commission upholding sales tax on lithographic work performed by the appellant was correct. The court, following its recent decision in **James v. TRES Computer Systems, Inc.**, 642 SW2d 347 (Mo. banc 1982), found that the lithographic process was the nontaxable sale of a technical professional service and that the transfer of ownership to tangible personal property was only incidental. K & A Litho Process received a color transparency from an outside source such as a printer, advertising agency or publishing house and then created a film separation and a color key that the printer, advertising agency or publishing house could use to print the transparency on paper for distribution. Because the color separation and the color key were merely the means of conveying a nontaxable technical service from K & A Litho to its customers, the gross amount paid to K & A Litho was not taxable.*

12 CSR 10-3.072 Repair Industries

PURPOSE: This rule interprets the sales tax law as it applies to repair industries and interprets and applies sections 144.010 and 144.021, RSMo.

(1) If a service-oriented business sells parts or materials as well as services, sales tax is applicable on all labor and service charges unless these costs are clearly segregated and separately stated from parts or materials on billing or invoice. Accurate records must be maintained by the business.

(2) For the purpose of this rule, repair of tangible personal property means and includes work done, using parts or materials, to preserve or restore to or near the original condition made necessary by wear, normal use, partial destruction or dilapidation; the mending, correction or adjustment made for any defect or defective portion, alterations and changes in the size, shape or content.

(3) Service-oriented businesses which sell parts or materials in conjunction with or as part of their repair services may purchase those parts and materials under a resale exemption certificate.

(4) Example 1: Handy Dandy Service Station repairs Mr. Big's car and separately states the repair service and the parts on the billing. Handy Dandy Service Station should purchase those parts under a resale exemption certificate.

(5) Service-oriented businesses which consume materials and supplies as an insignificant and inconsequential part of their repair services should purchase those materials and supplies subject to sales tax.

(6) Example 2: Mr. Tidy delivers his suit to the dry cleaners with a request that they clean and press the suit, replace a missing button and sew a split seam. The button and thread used to mend the suit are insignificant and inconsequential parts of the services rendered and the dry cleaners should purchase those materials and supplies subject to sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 78 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-32 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.074 Garages, Body and Automotive Shops and Service Stations

PURPOSE: This rule interprets the sales tax law as it applies to garages, body and automotive shops and service stations, and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Persons engaged in automotive repair work should purchase the automotive parts, tires, batteries, accessories and other items sold to their customers as part of or in conjunction with their repair service under a resale exemption certificate.

(2) Persons engaged in automotive repair who purchase materials and supplies used or consumed in the repair business and not resold to the customers should purchase these items subject to sales tax.

(3) The garage, service station or automotive repair shop is subject to the sales tax on all parts sold, and on labor or services unless the labor or services are separately stated on the billing or invoice.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule nos. 39 and 41 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-33 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.

12 CSR 10-3.076 Used Car Dealers

PURPOSE: This rule interprets the sales tax law as it applies to used car dealers and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Used car dealers who do not make any retail sales other than automobiles are not required to register with the Department of Revenue. When purchasing parts for use in repairing used cars which will later be sold, they should furnish their suppliers with their dealer registration number in order to purchase the parts tax exempt.

(2) Used car dealers who repair cars for others or who otherwise sell parts are subject to sales tax on the gross receipts from these sales and they are required to obtain a Missouri Retail Sales Tax License.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-33A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.

12 CSR 10-3.078 Laundries and Dry Cleaners

PURPOSE: This rule interprets the sales tax law as it applies to laundries and dry cleaners, and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Laundries and dry cleaners are providing nontaxable services which are not subject to sales tax. Tangible personal property such as suits, wearing apparel or garment bags when sold by them are subject to the sales tax.

(2) Laundries, dry cleaners and other similar businesses who rent or lease linens, towels and other such items are subject to the sales tax on these receipts, unless the Missouri sales tax was paid on the tangible property by the establishment at the time of purchase.

(3) Persons selling equipment, cleaning agents, soaps, hangers, polyester bags and other items to laundries and cleaners for use or consumption in the performance of their service are subject to the sales tax on the gross receipts from all these sales.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 76 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-34 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.

***Foto's Copies, Inc. v. Director of Revenue**, Case Nos. RS-85-0068, RS-85-0069 and RS-85-0109 (A.H.C.6/8/87). Gross receipts from coin-operated copiers are subject to Missouri sales tax. Finding that the true object of obtaining a copy is to obtain a tangible reproduction of the original and that the information is not purchased because the purchaser already has the information on the original, the Administrative Hearing Commission held the transactions to be sales of tangible personal property, subject to Missouri sales tax.*

***Tri-State Service Co. v. Director of Revenue**, Case No. RI-85-1602 (A.H.C. 7/9/87). The Administrative Hearing Commission ruled that Tri-State was liable for compensating use tax on those linens and uniforms that are purchased from out-of-state suppliers, delivered to Missouri, placed in inventory in Missouri and then rented to out-of-state users. At the time of placement into inventory, Tri-State did not know which customer would use the items and Tri-State commingled the linens and uniforms with the general mass of property of this state when they were placed in inventory. The linens and uniforms were therefore sold to Tri-State for storage and use in Missouri.*

12 CSR 10-3.080 Ceramic Shops

PURPOSE: This rule interprets the sales tax law as it applies to ceramic shops and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Ceramic shops making sales of greenware and other tangible personal property are subject to the sales tax. The ceramic shop is not subject to the sales tax on charges for firing greenware or other property of its customers where charges for firing are separately stated on the billing. The cost of firing greenware which the shop sells is an element of the selling price and subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-35 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.

12 CSR 10-3.082 Furniture Repairers and Upholsterers

PURPOSE: This rule interprets the sales tax law as it applies to furniture repairers and upholsterers, and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Persons who repair or upholster furniture for others are subject to sales tax on all the gross receipts of all property sold to the customer as part of or in conjunction with the service as well as all labor unless the labor is separately stated.

(2) Persons who repair or upholster furniture for others should pay sales tax on all materials and supplies used or consumed in the repair service which are not resold to customers in conjunction with the service.

(3) Resale exemption certificates must be issued by furniture repairers and upholsterers only for those items which will be resold.

(4) When a furniture repairer or upholsterer sells an item which has been repaired, the entire gross receipts are subject to the sales tax with no deduction for labor.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 79 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-36 was last filed Dec. 5, 1975, effective Dec. 15, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.084 Fur and Garment Repairers

PURPOSE: This rule interprets the sales tax law as it applies to fur and garment repairers, and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Persons who repair furs and garments for others are subject to sales tax on the gross receipts of all property sold to the customer as part of or in conjunction with the repair service as well as all labor unless the labor is separately stated.

(2) Persons who repair furs and garments for others should pay sales tax on all materials and supplies used or consumed in the repair service which are not resold to customers in conjunction with the service.

(3) Resale exemption certificates must be issued by fur and garment repairers only for those items which will be resold.

(4) When a furrier or garment repairer sells an item which has been repaired or manufactured, the entire gross receipts are subject to the sales tax with no deduction for labor.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 80 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-37 was last filed Dec. 5, 1975, effective Dec. 15, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.086 Bookbinders, Papercutters, Etc.

PURPOSE: This rule interprets the sales tax law as it applies to bookbinders, papercutters and other such persons, and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Bookbinders, papercutters, paperfolders and other such persons, binding, cutting, folding, gathering, padding and punching printed matter for other persons are rendering services not subject to sales tax. All equipment and supplies purchased for use or consumption in fulfilling their services such as cloth, leather, cardboard, glue, thread and similar items are subject to sales tax at the time of purchase.

(2) When bookbinders and the like make, bind, cut, fold and the like, their own books, magazines, other printed matter, loose leaf or detachable binders, they should purchase their supplies under a resale exemption certificate provided the supplies become a component part of the book, magazine or other item which is ultimately sold at retail. The bookbinders' gross receipts are subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 73 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-37A was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

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

***Foto's Copies, Inc. v. Director of Revenue**, Case Nos. RS-85-0068, RS-85-0069 and RS-85-0109 (A.H.C. 6/8/87). Gross receipts from coin-operated copiers are subject to Missouri sales tax. Finding that the true object of obtaining a copy is to obtain a tangible reproduction of the original and that the information is not purchased because the purchaser already has the information on the original, the Administrative Hearing Commission held the transactions to be sales of tangible personal property, subject to Missouri sales tax.*

12 CSR 10-3.088 Photographers, Photofinishers and Photoengravers

PURPOSE: This rule interprets the sales tax law as it applies to photographers, photofinishers, photoengravers and services performed by artists, and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Sales of photoengravings, photostats, blueprints, electrotypes, stereotypes, wood engravings and the like, to customers for use or consumption, whether on special order, contract or otherwise, are subject to sales tax. Likewise, sales to architects, abstract and title companies are also retail sales for use and consumption and therefore are subject to sales tax. Sales of picture frames, films, cameras and other similar items are sales at retail and are subject to sales tax.

(2) 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 which will ultimately be sold at retail, should purchase their supplies under a resale exemption certificate. However, supplies, equipment, dry plates, film, chemicals and other materials purchased for their own use or consumption are subject to sales tax.

(3) The sale of photographic prints, when the sale price includes the sale of processing, service or labor as well as tangible personal property, is subject to sales tax on the entire sales price. Sales of slides, including services, are subject to sales tax on the gross receipts, where the customer receives tangible personal property incidental to the processing of such slides. The sale of negative development services only, where no new prints, slides or other tangible personal property are received, is not subject to the sales tax (see *The Flash Cube, Inc. v. Director of Revenue*, A.H.C. No. RS-80-0083).

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 70*

Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-37B was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.

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

*In **The Flash Cube, Inc. v. Director of Revenue**, Case No. RS-80-0083, (A.H.C. 3/16/83), the issue was whether the sale of photographic prints, slides and negatives was a taxable sale of tangible personal property or the sale of a nontaxable service. The Administrative Hearing Commission held that sales tax was due on prints and slides because in preparing these items for the end user the taxpayer added photographic paper and cardboard frames to the finished product. Processing of negatives was held to be nontaxable service since the taxpayer did not add any of his own tangible personal property to the end user's product.*

***P.F.D. Supply Corporation v. Director of Revenue**, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The commissioner, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.*

*Relying on its previous decision in **Blueside Co. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84) the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to **Blueside**, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.*

*However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in **Overland Steel, Inc. v. Director of Revenue**, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the **Overland Steel** case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2), in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.*

Finally, the commission held that nonreusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on such items.

***Foto's Copies, Inc. v. Director of Revenue**, Case Nos. RS-85-0068, RS-85-0069 and RS-85-0109 (A.H.C. 6/8/87). Gross receipts from coin-operated copiers are subject to Missouri sales tax. Finding that the true object of obtaining a copy is to obtain a tangible reproduction of the original and that the information is not purchased because the purchaser already has the information on the original, the Administrative Hearing Commission held the transactions to be sales of tangible personal property, subject to Missouri sales tax.*

***Douglas J. Rousseau, d/b/a Rousseau Photography v. Director of Revenue**, Case No. RS-87-0011 (A.H.C. 10/8/87). The Administrative Hearing Commission found that the photographer was making sales of class pictures directly to the students and the sales were subject to sales tax. The agreements with the schools were for the exclusive right to take the pictures at the schools and were not agreements to make sales to the schools or to act as the schools' agent. Separate contracts were entered into by the photographer and the students for the sale of pictures. The schools had no input as to which students purchased pictures or what picture packages were purchased. In addition, the payment for the pictures were made by the students and did not come from schools' funds.*

***Snap Shot Photo v. Director of Revenue**, Case No. RS-87-1056 (A.H.C. 8/29/88). The Administrative Hearing Commission found that photofinishing is manufacturing and that contrary to the Department of Revenue's position, photofinishing is an integrated process and therefore, both stages of the taxpayer's operation were manufacturing under 144.030.2(2), (4) and (5), RSMo.*

The Administrative Hearing Commission also found that all chemicals used in the photofinishing process as part of a closed vat system, and not washed away during the process, were exempt from taxation because "all such chemicals do become ingredients and component parts of all the products over time."

12 CSR 10-3.090 Watch and Jewelry Repairers

PURPOSE: This rule interprets the sales tax law as it applies to watch and jewelry repairers, and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Repairers of watches and jewelry are performing a service not subject to the sales tax provided no part(s) or other property is sold as part of or in conjunction with the service. Labor to repair the article should be completely segregated from the charge for parts or other property sold in order to be deductible and not subject to the sales tax.

(2) Sellers of watches, watch chains and straps, clocks, pens, rings and other jewelry are subject to the sales tax. Persons selling parts or materials to watch and jewelry repairers are subject to the sales tax on the receipts from these sales unless the purchaser furnishes a resale exemption certificate. Exemption certificates must be issued by watch and jewelry repairers as evidence that the parts or other items purchased will be resold.

(3) Example: Mr. Gemm, a jeweler, repairs and cleans a watch and replaces a crystal and stem. He charges twenty-five dollars ($25), a lump sum for the crystal, stem and labor. Mr. Gemm is subject to the sales tax on the entire twenty-five dollar ($25) charge.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 81 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-38 was last filed Dec. 31. 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.092 Painters

PURPOSE: This rule interprets the sales tax law as it applies to painters and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Painters, refinishers, wallpaper hangers and other such persons are rendering a service not subject to the sales tax. Persons selling supplies such as paint, wallpaper, paste, varnish and tools of the trade to painters or other such persons for use or consumption are subject to the sales tax on the gross receipts from all such sales.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 53 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-39 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

12 CSR 10-3.094 Interior or Exterior Decorators

PURPOSE: This rule interprets the sales tax law as it applies to interior and exterior decorators, and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Interior and exterior decorators who provide only services are not subject to the sales tax. Persons selling tangible personal property to these decorators are subject to the sales tax on the gross receipts from these sales.

(2) When interior and exterior decorators make sales of tangible personal property in addition to providing their services they should purchase their supplies or materials under a resale exemption certificate. The interior or exterior decorator is subject to the sales tax on all property sold and all labor or services unless the labor or services are separately stated on the billing or invoice.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 53 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-40 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

12 CSR 10-3.096 Janitorial Services

PURPOSE: This rule interprets the sales tax law as it applies to janitorial services and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Persons who render janitorial services such as floor waxers, window washers and cleaners are rendering a service not subject to sales tax. Persons selling equipment and supplies such as soap, wax, cleaning fluids, cleaning agents, mops and brooms to persons who render janitorial service are subject to the sales tax on the gross receipts from these sales.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-41 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

12 CSR 10-3.098 Drugs and Medicines

PURPOSE: This rule interprets the sales tax law as it applies to sales of drugs and medicines, and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Except as otherwise specified, pharmacists, druggists, doctors and other persons selling drugs, medicines or similar items on prescription, or otherwise, for use or consumption are engaged in the business of selling tangible personal property at retail and are subject to the sales tax. Labor or services in compounding drugs or medicines may not be deducted from the gross receipts in computing the sales tax due.

(2) Sales in insulin, hearing aids and hearing-aid supplies are not subject to sales tax.

(3) Sales tax does not apply to sale of any drugs which may be legally dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to administer those items.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 69 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-42 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***W.H. Hopmeier, Inc. v. Director of Revenue**, Case No. RS-79-0295 (A.H.C. 7/19/82). The Department of Revenue is not required to give taxpayers notice of change in law and is not estopped from collection of tax by an unauthorized pronouncement of a department agent that assessments would not be made. Assessment for first five days in May 1979 are void because effective date of the statute was May 5, 1979.*

12 CSR 10-3.100 Barber and Beauty Shops

PURPOSE: This rule interprets the sales tax law as it applies to barber and beauty shops, and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Barber shops, beauty shops and similar establishments render services not subject to sales tax. Persons selling hair conditioners, rinses, dyes, shampoos, tonics, lotions, soaps, other supplies, equipment and items which are used and consumed by the shops and acquired to conduct and perform their services are subject to the sales tax on the gross receipts from all the sales.

(2) Barber and beauty shops making sales of tangible personal property such as wigs, toupees, hair lotions, hair dryers and other hair products are required to register with the department as all sales of this property are subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 75 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-43 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.102 Sheet Metal, Iron and Cabinet Works

PURPOSE: This rule interprets the sales tax law as it applies to sheet metal, iron and cabinet works.

(1) Persons other than contractors involved with sheet metal, iron and cabinet works are subject to the sales tax on all tangible personal property they construct and transfer for final consumption, whether those properties, when completed, are held in stock until sold or constructed for the fulfillment of an order or contract. Under no circumstances will labor to construct those articles be an allowable deduction from gross receipts.

(2) Example: A cabinetmaker agrees to custom build and install kitchen cabinets in Bill's motor home recreational vehicle for the sum of eight hundred dollars ($800). Labor to construct the cabinets in the fulfillment of his agreement may not be deducted from the eight hundred dollar ($800) purchase price and sales tax is to be applied to the full eight hundred dollars ($800).

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 52 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-44 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.

***State ex rel. Otis Elevator Co. v. Smith**, 212 SW2d 580 (Mo. banc 1948). Otis Elevator Company was in the business of designing, constructing, installing and repairing elevators in buildings. Respondent claimed there was no sales tax due to petitioner Smith because the materials used to construct new elevators or to modify existing elevators lost their character or status as tangible personal property and became a part of the real property coincidently with their delivery and attachment to the building. Respondent kept a title retention clause in his contract with the building contractor allowing him to retain title to the elevator until he was paid in full and if not, to remove the elevator. Judge Ellison held this clause prevented the tangible personal property from being joined with the realty. Absent this contractual clause, the court would have reached a different conclusion.*

Where the contract for installation of new elevators, and reconstruction or major repairs to existing elevators whereby elevator company retains title to materials until paid, the elevator company is liable for sales tax. Had the contract not contained the title retentions clause the elevator company would not be liable for sales tax.

*Where elevator company does repair work on existing elevators and supplies small parts which become part of the elevator, and does not retain title to the parts, the company is not subject to sales tax. The parts become part of the realty (see **Air Comfort Service, Inc. v. Director of Revenue**, Case No. RS-83-1982 (A.H.C. 4/25/84) and **Marsh v. Spradling**, 402 SW2d 537 (Mo. banc 1976)).*

***Roger W. Marsh, d/b/a Bestmade Wood Products v. Spradling**, 537 SW2d 402 (Mo. banc 1976). Marsh made kitchen cabinets to order and installed them in new homes. Marsh paid sales tax on the materials and lumber used to make the cabinets. The court held that the cabinets became a part of the realty upon attachment and were not subject to any further sales tax. The case also states that pre-made cabinets from a shop, sold to a purchaser who takes them home and installs them are subject to sales tax.*

12 CSR 10-3.104 Vending Machines Defined
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 010-45 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.106 Vending Machines on Premises of Owner
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 67 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-46 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

***Canteen Corporation v. Goldberg**, 592 SW2d 754 (Mo. banc 1980). This company derived income from selling candy bars through coin-operated vending machines. Appellant contended that a candy bar which cost 25¢ should be taxed on that amount. Respondent stated the candy bar really cost 24¢ and the extra penny was sales tax. The court agreed with Canteen Corporation.*

***L & R Distributing, Inc. v. Department of Revenue**, 529 SW2d 375 (Mo. banc 1975). L & R owned several pinball machines and other coin-operated devices. Appellant sought to subject the proceeds from these devices to taxation based on section 144.010.1(2), RSMo (1978). The court held that the mere placement of a pinball or other coin-operated amusement device in a public location was not sufficient to turn the location into a place of amusement for taxing purposes.*

***Foto's Copies, Inc. v. Director of Revenue**, Case Nos. RS-85-0068, RS-85-0069 and RS-85-0109 (A.H.C. 6/8/87). Gross receipts from coin-operated copiers are subject to Missouri sales tax.*

12 CSR 10-3.108 Vending Machines on Premises Other Than Owner
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 67 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-47 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

***Canteen Corporation v. Goldberg**, 592 SW2d 754 (Mo. banc 1980). This company derived income from selling candy bars through coin-operated vending machines. Appellant contended that a candy bar which cost 25¢ should be taxed on that amount. Respondent stated the candy bar really cost 24¢ and the extra penny was sales tax. The court agreed with Canteen Corporation.*

***L & R Distributing, Inc. v. Department of Revenue**, 529 SW2d 375 (Mo. banc 1975). L & R owned several pinball machines and other coin-operated devices. Appellant sought to subject the proceeds from these devices to taxation based on section 144.010.1(2), RSMo 1978. The court held that the mere placement of a pinball or other coin-operated amusement device in a public location was not sufficient to turn the location into a place of amusement for taxing purposes.*

***L & R Distributing Co., Inc. v. Department of Revenue**, 648 SW2d 91 (Mo. banc 1983). The court held that the proceeds of coin-operated amusement devices located in places of amusement are taxable.*

12 CSR 10-3.110 Publishers of Newspapers
(Rescinded June 11, 1990)

AUTHORITY: section 144.270, RSMo 1986. Previously filed as rule no 72 Jan. 22, 1973, effective Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-48 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Feb. 27, 1990, effective June 11, 1990.

***Daily Record Co., d/b/a Mid-America Printing Company v. Ray James**, 629 SW2d 348 (Mo. banc 1982). This opinion by Judge Seiler defines the term "newspaper." It cites without comment Department of Revenue's definition of "newspaper" which is contained in 12 CSR 10-3.112. It held that an advertising supplement which is printed solely to be inserted into and distributed by a newspaper is an integral part of that newspaper and is entitled to same exemption from sales tax as is the remainder of newspaper.*

***James v. Mars Enders, Inc.**, 629 SW2d 331 (Mo. banc 1982). Printing costs of advertising supplements, which were printed to be distributed as part of newspaper and which were, in fact, distributed as part of a newspaper, were not sales of tangible personal property or services and were thus not subject to sales tax; newsprint used to print the supplements was "newsprint used in newspaper" and was exempt from taxation.*

***Blake D. Thomas, d/b/a The Thomas Report v. Director of Revenue**, Case Nos. RS-84-2144 and RZ-86-1162 (A.H.C. 5/11/87). 12 CSR 10-3.112(1) provides the minimum requirements for a publication to qualify as an exempt newspaper. The test is whether the contents of the publication are of the nature required by the regulation. Petitioner's publication did not disseminate news to the public but was instead intended to serve as a vehicle for petitioner's investment advice and commentary. It did not qualify, therefore, for the newspaper exemption.*

12 CSR 10-3.112 Newspaper Defined

PURPOSE: This rule defines the term newspaper for purposes of the sales tax law and interprets and applies sections 144.010, 144.021 and 144.030, RSMo.

(1) In order to constitute a newspaper, the publication must contain at least the following elements: it must be published at stated short intervals, usually daily or weekly; it must not, when its successive issues are put together, constitute a book; it must be intended for dissemination of news to the general public; it must contain matters of general interest and reports of current events; and it must generally be in sheet form.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-49 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Daily Record Co., d/b/a Mid-America Printing Company v. Ray James**, 629 SW2d 348 (Mo. banc 1982). This opinion by Judge Seiler defines the term "newspaper". It cites without comment Department of Revenue's definition of "newspaper" which is contained in 12 CSR 10-3.112. It held that an advertising supplement which is printed solely to be inserted into and distributed by a newspaper is an integral part of that newspaper and is entitled to the same exemption from sales tax as is the remainder of newspaper.*

***James v. Mars Enders, Inc.**, 629 SW2d 331 (Mo. banc 1982). Printing costs of advertising supplements, which were printed to be distributed as part of a newspaper and which were, in fact, distributed as part of newspaper, were not sales of tangible personal property or services and were thus not subject to sales tax; newsprint used to print the supplements was "newsprint used in newspaper" and was exempt from taxation.*

***Blake D. Thomas, d/b/a The Thomas Report v. Director of Revenue**, Case Nos. RS-84-2144 and RZ-86-1162 (A.H.C. 5/11/87). 12 CSR 10-3.112(1) provides the minimum requirements for a publication to qualify as an exempt newspaper. The test is whether the contents of the publication are of the nature required by the regulation. Petitioner's publication did not disseminate news to the public but was instead intended to serve as a vehicle for petitioner's investment advice and commentary. It did not qualify, therefore, for the newspaper exemption.*

12 CSR 10-3.114 Periodicals, Magazines and Other Printed Matter
(Rescinded June 11, 1990)

AUTHORITY: section 144.270, RSMo 1986. Previously filed as rule No. 72 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-50 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Jan. 28, 1983, effective May 12, 1983. Rescinded: Filed Feb. 27, 1990, effective June 11, 1990.

***Daily Record Co., d/b/a Mid-America Printing Company v. Ray James**, 629 SW2d 348 (Mo. banc 1982). This opinion by Judge Seiler defines the term "newspaper". It cites without comment Department of Revenue's definition of "newspaper" which is contained in 12 CSR 10-3.112. It held that an advertising supplement which is printed solely to be inserted into and distributed by a newspaper is an integral part of that newspaper and is entitled to the same exemption from sales tax as is the remainder of newspaper.*

***James v. Mars Enders, Inc.**, 629 SW2d 331 (Mo. banc 1982). Printing costs of advertising supplements, which were printed to be distributed as part of newspaper and which were, in fact, distributed as part of newspaper, were not sales of tangible personal property or services and were thus not subject to sales tax; newsprint used to print such supplements was "newsprint used in newspaper" and was exempt from taxation.*

***Dolgin's Incorporated v. Director of Revenue**, A.H.C. No. RS-79-0322 (1982). Dolgin's advertised its products by using professionally printed advertising supplements in newspapers within this state. They also distributed the same advertising supplement direct to Missouri consumers by mail. These direct mail advertising supplements were held taxable under section 144.610.1., RSMo 1978 because Dolgin's "used" them within this state. The interruption of transportation of supplements at distribution points in Missouri, prior to their being placed in the U.S. mail, constitutes a taxable moment. The newsprint exemption from sales tax does not apply since these supplements did not become "integral parts of newspapers."*

12 CSR 10-3.116 Service Station Ownership

PURPOSE: This rule interprets the sales tax law as it applies to service station ownership and interprets and applies sections 144.010 and 144.021, RSMo.

(1) When a service station, including fixtures and inventory, is owned by a petroleum company and when the petroleum company employs a manager or operator to carry on the functions, objectives and operations of that business, the petroleum company is subject to the sales tax on the sales of each service station selling at retail within this state.

(2) When a service station and fixtures are rented or leased to an operator who owns and has title to inventory, as s/he becomes owner of tangible personal property for sale at retail, whether on consignment or otherwise, the operator is subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 90 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-51 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.118 Leased Departments or Space

PURPOSE: This rule interprets the sales tax law as it applies to leased departments or space and interprets and applies sections 144.010 and 144.021.

(1) When a business leases certain of its departments or leases space to other persons selling tangible personal property or taxable services to consumers, each lessee shall make separate returns and remittances.

(2) Example: Mr. Big, who sells furniture, leases a portion of his store to Mr. Cap for the purpose of selling appliances. Both Mr. Big and Mr. Cap should file separate sales tax returns.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 21 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-52 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.120 Food Stamps and W.I.C. (Women, Infants and Children) Vouchers

PURPOSE: This rule interprets the sales tax law as it applies to food stamps and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Food stamp receipts derived from customers who pay for food products with federal food stamp coupons or W.I.C. (Women, Infants and Children) vouchers are not subject to the sales tax.

(2) Purchases made with food stamps or W.I.C. vouchers shall be treated by the department as an exemption certificate presented to the seller by the purchaser.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-53 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Emergency amendment filed Sept. 24, 1987, effective Oct. 4, 1987, expired Feb. 1, 1988. Amended: Filed Sept. 24, 1987, effective Jan. 29, 1988.*

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

12 CSR 10-3.122 Consideration Other Than Money, Except for Trade-Ins

PURPOSE: This rule interprets the sales tax law as it applies to consideration other than money, except for trade-ins, and interprets and applies section 144.010, RSMo.

(1) Except in situations involving a trade-in, when the consideration received by the seller for the item sold is in a form other than money, the fair market value of the consideration received must be included in the gross receipts of the seller. Fair market value is to be determined as of the time of the transaction.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 16 Jan. 22, 1973, effective Feb. 1, 1973. S. T. regulation 010-54 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.124 Coins and Bullion

PURPOSE: This rule interprets the sales tax law as it applies to coins and bullion, and interprets and applies sections 144.010, 144.020 and 144.021, RSMo.

(1) When any coin or currency is exchanged in the open market, at the current exchange rate, that transaction is not subject to the sales tax. However, when coins or currency, although acceptable as legal tender, are purchased at rates not reflecting actual currency value, for numismatic collection purposes or where the precious metal content of the coins determines their value, the transaction is the sale of tangible personal property subject to the sales tax.

(2) Sales of bullion are subject to sales tax. Bullion sold within Missouri which is physically or constructively transferred in the state is subject to the sales tax. Sales of gold and silver commodity contracts are not subject to sales tax.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-55 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Scotchman's Coin Shop, Inc. v. Administrative Hearing Commission**, 654 SW2d 873 (Mo. banc 1983). The sole issue in this case was whether sales tax was applicable to the purchase price of silver coins, Krugerrands and silver bars. The taxpayer claimed that the property was money and thus intangible personal property not subject to sales tax under section 144.020, RSMo 1978. Also at issue was whether the imposition of sales tax interfered with the exclusive power of the federal government to regulate the value of U.S. and foreign coins and to regulate commerce with foreign nations.*

The court found against the petitioner and for the department on the grounds that the coins and metal at issue constituted tangible personal property rather than intangible property or money. The court looked beyond legal fictions and academic jurisprudence to the essence of the transaction and found that money has value both as tangible and intangible personal property. In the case at hand the court believed that the sales had been made for the tangible value of the metal rather than for the intangible value of the items as a medium of exchange. The court found that the items in question were sold for their value as precious metal and were therefore personal property subject to sales tax. The court also found that because the department's regulation 12 CSR 10-3.124, which outlined the basis for taxing certain types of coin or currency, was in compliance with the intent of section 144.020.1., RSMo 1978 that it did not create an irrational, artificial classification.

Finally, the court found that because the tax in question was imposed on the value of the precious metal and not on the intangible values assigned the coins by the federal government that the sales tax in no way infringed

upon the exclusive right of the federal government to regulate the value of money or coin or to determine the character of legal tender.

***Martin Coin Co. of St. Louis v. Richard A. King**, 665 SW2d 939 (Mo. banc 1984). The court held in **Scotchmen's Coin Shop v. Administrative Hearing Commission**, 654 SW2d 873 (Mo. banc 1983) that sales of coins for their value as precious metal constituted the sale of personal property subject to sales tax. Martin Coin attempted to distinguish its activities from those of Scotchman's by asserting that it was an agent between two principals and that it was not a vendor, but merely a broker. Martin Coin purchased the coins in question on its own line of credit, was liable to the vendor of the coins, bore the risk of nonpayment by its customers, deposited the proceeds from the sales in its own bank account and paid the supplier for coins ordered. In the court's opinion, Martin Coin was involved in both a) the purchase of coins from the supplier and b) the sale of coins to customers. The latter constituted a taxable event. Additionally, the court noted that while Martin Coin attempted to label itself an agent, rather than a vendor, there was no evidence in the record to indicate that the vendors of the coins had any control over Martin Coin; thus a key element of agency was lacking. The court refused on procedural grounds to hear the issue which Martin Coin raised in its brief concerning invasion of the federal government's exclusive power to regulate foreign commerce.*

12 CSR 10-3.126 Federal Manufacturer's Excise Tax

PURPOSE: This rule interprets the sales tax law as it applies to the federal manufacturer's excise tax.

(1) When tangible personal property is subject to the federal manufacturer's excise tax and the manufacturer passed the excise tax on to the seller or retailer, the total amount of money or other consideration received by the seller is subject to the sales tax except the amount of the federal manufacturer's excise tax separately stated on the invoice.

(2) When the seller is required by the federal law to collect a federal excise tax from the purchaser and remit the tax directly to the federal government, the seller is not required to include the excise tax collected in his/her gross receipts.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 84 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-56 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

12 CSR 10-3.128 Salvage Companies

PURPOSE: This rule interprets the sales tax law as it applies to salvage companies and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Persons who dismember tangible personal property, such as automobiles, and sell the separate parts are subject to the sales tax on those sales.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-57 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.130 Assignments and Bankruptcies

PURPOSE: This rule interprets the sales tax law as it applies to assignments and bankruptcies, and interprets and applies sections 144.010, 144.083 and 144.090 in conjunction with Chapter 11 U.S.C.A., Bankruptcy Code.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) The trustee in bankruptcy, or the assignee in the case where an assignment has been made for and on behalf of creditors, should remit any outstanding taxes, interest charges or penalties before a general distribution of funds is made.

(2) When the courts appoint any person, whether trustee, assignee or receiver, to take over any business and operate or liquidate it, those persons are subject to sales tax. Every person should immediately notify the Department of Revenue when appointed by the court to take over or liquidate any business. These persons may continue to report sales taxes under the sales tax number assigned to the debtor.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 14 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-58 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.131 Change of State Sales Tax Rate

PURPOSE: This rule clarifies that gross receipts received after the effective date of a change to the state tax rate are subject to the new tax rate.

(1) Sales tax is calculated at the tax rate in effect on the date of the sale.

(2) When a change in the Missouri state sales tax rate becomes effective, all gross receipts from cash or charge sales made by a retailer on or after the effective date of the rate change are subject to the new sales tax rate.

(3) Gross receipts from charge sales made prior to the effective date of the rate change are subject to the tax rate in effect at the time the charge sale was made.

(4) A retailer of tangible personal property in Missouri may report and remit a sales tax liability based upon either the gross sales method or the gross receipts method. If the retailer elects to report under the gross sales method, the retailer must report the sale in the month in which the sale is made and pay the sales tax rate in effect at the time the sale is made. If the retailer elects to report under the gross receipts method, the retailer must report and remit sales tax based upon the sales tax rate in effect at the time the sale was made (see 12 CSR 10-3.164 Installment Sales and Repossessions for reporting of sales tax on installment sales). A retailer may not change his/her reporting method without permission from the director of revenue.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective*

Jan. 12, 1985. Emergency amendment filed Sept. 29, 1989, effective Oct. 9, 1989, expired Feb. 5, 1990. Amended: Filed Sept. 29, 1989, effective Feb. 25, 1990.

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

12 CSR 10-3.132 Purchaser Includes
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 010-59 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.134 Purchaser's Responsibilities

PURPOSE: This rule interprets the sales tax law as it applies to a purchaser's responsibilities and interprets and applies sections 144.010 and 144.060, RSMo.

(1) When a person has delivered an exemption certificate and the person delivering the exemption certificate uses the tangible personal property in a manner other than that indicated on the exemption certificate, then the person delivering the exemption certificate is subject to the sales tax on the purchase price of the tangible personal property at the time it is converted to use.

(2) A seller is not subject to the sales tax when a sale is made in good faith reliance upon a signed exemption certificate. The purchaser, however, is subject to tax, interest and penalties on all exemptions which are subsequently determined to be erroneous.

(3) Example 1: Z operates a furniture store in Missouri. S/he issues a sale for resale exemption certificate to all of his/her suppliers. Z decides to take a refrigerator out of stock for use in his/her home. Because the sales tax was not paid at the time of the acquisition, Z must now pay sales tax on the actual cost of the refrigerator. Should Z subsequently return the used refrigerator to his/her stock of goods, sales tax would be due on the selling price of the refrigerator when sold to a subsequent purchaser.

(4) Example 2: G owns and operates a grocery store. G buys two (2) dozen brooms for resale and delivers an exemption certificate. G then removes six (6) of these brooms from stock for use in cleaning the store. G is subject to the sales tax on the actual cost of the six (6) brooms removed from stock.

(5) Example 3: K owns a department store and sells, among numerous items, paint which s/he purchases from his/her wholesaler after delivering a sale for resale exemption certificate. In remodeling his/her store, s/he takes from his stock a quantity of paint. K must incorporate the actual cost of the paint in his/her gross receipts and pay the sales tax accordingly.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 22, Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-60 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***P.F.D. Supply Corporation v. Director of Revenue**, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The commissioner, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.*

*Relying on its previous decision in **Blueside Co. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84) the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to **Blueside**, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the "user" and the sale to that restaurant was a taxable retail sale.*

*However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in **Overland Steel, Inc. v. Director of Revenue**, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the **Overland Steel** case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2), in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.*

Finally, the commission held that nonreusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on such items.

12 CSR 10-3.136 Consideration Other Than Money

PURPOSE: This rule interprets the sales tax law as it applies to consideration other than money and interprets and applies section 144.010, RSMo.

(1) Sale, for the purpose of the sales tax law, includes the exchange of tangible personal properties for money or any other valuable consideration. The sales tax is levied on the consideration paid or charged for the exchange of tangible personal property or taxable services, including the fair market value of the property at the time and place of exchange. Consequently, a sale may exist whether money has been exchanged or not as long as there is a valuable consideration.

(2) Example: An electrician agrees to do electrical work for a grocer in return for fifty dollars ($50) in groceries. The grocer is subject to the sales tax on the fifty dollars ($50) since consideration was passed between both parties.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 16 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-61 was last filed Oct. 28,*

1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.

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

12 CSR 10-3.138 Consideration Less Than Fair Market Value

PURPOSE: This rule interprets the sales tax law as it applies to consideration less than fair market value and interprets and applies section 144.300, RSMo.

(1) When it appears to the satisfaction of the Department of Revenue that the seller and purchaser have not dealt at arm's length and the consideration received is less than the fair market value of the item sold, leased or rented, the seller or lessor will be required to include in his/her gross receipts the fair market value of the item sold, leased or rented or the service performed.

(2) Example 1: The Good Company is a corporation which is affiliated with the Zee Equipment Company. Because of their affiliation, Good leases a thirty thousand dollar ($30,000) tractor from Zee for one dollar ($1) a month. Zee must pay sales tax on the adjusted amount of the market value of a monthly lease on a thirty thousand dollar ($30,000) tractor if sales tax was not paid on the tractor at the time of purchase.

(3) Example 2: The Do All Drug Company holds a special sales promotion during which customers buying two (2) bottles of Do All Vitamins for two dollars and ninety-nine cents ($2.99) get a third bottle for one cent (1¢). Stores selling Do All Vitamins are subject to the sales tax on the three dollar ($3) sales price only. The reduction in the selling price of the third bottle is an approved discount as the seller and the purchaser are dealing at arm's length.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-62 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

12 CSR 10-3.140 Interdepartmental Transfers

PURPOSE: This rule interprets the sales tax law as it applies to interdepartmental transfers and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Interdepartmental transfers mean the conveyance of tangible personal property between various departments of a single business. This transfer of goods does not constitute a sale and is not subject to sales tax. Transfers of property between separate corporate entities is not an interdepartmental transfer but a sale.

(2) Example: A business having its own printing department prints letterhead on stationery which is consumed by other departments within the same business. In this case, the printing is not taxable since title has not passed for consideration. Sales tax would be due the supplier of the stationery when purchased by the business.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 20 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-63 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Central Cooling & Supply Co. v. Director of Revenue**, 648 SW2d 546 (Mo. banc 1982). Transfers of property between two corporations are subject to sales tax even though the transferor was a subsidiary of the transferee, created for the limited purpose of purchasing goods for the parent corporation. The court held that, "Central and Johnson were organized as separate corporate entities for a proper business purpose. There is no basis for ignoring this separate corporate existence to permit Central to avoid tax liability and gain an unfair advantage over other separately owned corporations."*

***Bath Antiques v. Director of Revenue**, Case No. RS-80-0161 (A.H.C.8/17/82). Sales between parent corporations and subsidiary corporations are not exempt "interdepartmental transfers" as defined in 12 CSR 10-3.140(1). They are taxable sales.*

12 CSR 10-3.142 Trading Stamps

PURPOSE: This rule interprets the sales tax law as it applies to trading stamps and interprets and applies sections 144.010 and 144.021, RSMo.

(1) The person redeeming trading stamps for merchandise is subject to sales tax on the selling price of the merchandise. In the event the stamps are redeemed for cash, the person redeeming the stamps is not subject to the sales tax.

(2) When coupon books are sold to customers for use in lieu of money for purchasing merchandise, the sales of the coupon books are not subject to the sales tax. When merchandise is purchased with the coupons, however, the merchandise is subject to sales tax based on the value of the coupon used.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 23 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-64 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.144 Redemption of Coupons

PURPOSE: This rule interprets the sales tax law as it applies to the redemption of coupons and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Sellers accepting third-party coupons to be applied to the selling price of tangible personal property are subject to the sales tax on the total sales price including any coupon reimbursement, whether by cash, credit or otherwise, by suppliers, manufacturers or any other party.

(2) Retailers who issue and redeem store coupons and who are not reimbursed by a distributor or manufacturer are subject to sales tax on the sales price of tangible personal property less the stated value of the store coupons actually redeemed.

(3) Sellers accepting third-party coupons to be applied to the selling price of food items, which are purchased with food stamps, are subject to sales tax on that portion of the selling price reimbursed by third-party coupon rather than by cash, credit or otherwise, by suppliers, manufacturers or any other party.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 95 Jan. 22, 1975, effective Feb. 1, 1975. S.T. regulation 010-65 was last filed Dec. 5, 1975, effective Dec. 15, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed Nov. 4, 1992, effective May 6, 1993.*

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

12 CSR 10-3.146 Core Deposits

PURPOSE: This rule interprets the sales tax law as it applies to core deposits and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Persons selling rebuilt items are subject to the sales tax on the total selling price of the rebuilt items, less credits which may be given by that person for rebuildable items traded-in.

(2) Example 1: Mr. Fixy's generator on his car burns up. He takes the generator off his car and goes to Lefty's Auto Parts Company. Lefty's Auto Parts sells to Fixy a rebuilt generator for forty-five dollars ($45) and gives him a fifteen dollar ($15) credit for his rebuildable generator. Lefty's Auto Parts is subject to the sales tax on thirty dollars ($30).

(3) Example 2: Mr. Fixy also decided to get a different carburetor for his car to increase gas mileage. He drives to Lefty's Auto Parts and purchases a rebuilt carburetor. Lefty's Auto Parts charges forty-five dollars ($45) for the rebuilt carburetor and tells Mr. Fixy that if he returns his rebuildable carburetor he will be returned the core deposit of fifteen dollars ($15). Mr. Fixy, after installing the new carburetor, returns to Lefty's with the old rebuildable carburetor and receives his fifteen dollars ($15) back. Lefty's Auto Parts is subject to sales tax on thirty dollars ($30).

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-66 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.148 When a Sale Consummates

PURPOSE: This rule is a guideline for determining when a sale consummates.

(1) A sale takes place when the ownership of, or title to, tangible personal property is transferred. In cases where the property being purchased is unknown and cannot be readily determined, title does not pass nor is a sale consummated until that is ascertained. When properties for sale are known, title of goods may pass and the sale made at a time agreed upon by both parties under the contract.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 13 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-67 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

***In Kurtz Concrete, Inc. v. Spradling**, 560 SW2d 858 (Mo. banc 1978) the court held while title ordinarily will not pass until property is delivered to buyer or reaches agreed place but title will pass notwithstanding that seller is to make delivery if such is the intention of the parties, the intention of the parties to control.*

***Patton Tully Transportation Company v. Director of Revenue**, Case No. RS-85-1594 (A.H.C. 11/25/87). The parties intended that title to the rock would not pass to petitioner unless and until the stone was approved by the Army Corps of Engineers. It is the intent of the parties, by whatever means shown, that determines passage of title. The Administrative Hearing Commission determined no Missouri sales tax due on these transactions as title passed outside Missouri.*

***Tower Rock Stone Co. v. Director of Revenue**, Case No. RS-86-1011 (A.H.C. 4/7/88). The taxpayer contested the final decision of the director of revenue that its sales of stone were subject to Missouri sales tax.*

The Administrative Hearing Commission held that it was industry practice for the sale of the stone to be subject to approval by the Army Corps of Engineers. Citing 400.2—400.327, RSMo (1986) (UCC), the Administrative Hearing Commission stated that the sale of the stone was a sale on approval and therefore, title did not pass to the purchaser until the stone was inspected and accepted at the out-of-state job site.

12 CSR 10-3.150 Guidelines on When Title Passes

PURPOSE: This rule is a guideline for determining when title passes.

(1) All relevant facts in each case must be examined to determine when title to property transfers. When the intention of both the seller and the purchaser are not indicated, the following will determine when title passes: where there is an unconditional contract to sell specific goods in a deliverable state, title to the goods are delivered to the purchaser; where there is a contract to sell specific goods, and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, title does not pass until these things are accomplished; and if the contract requires the seller to deliver the goods to the purchaser at a place designated by the purchaser or if the contract calls for the seller to pay transportation or shipping charges, title does not pass until the goods have been delivered to the purchaser as agreed upon.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 13 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-68 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Kaiser Aluminum & Chemical Sales v. Director of Revenue**, Case No. RS-82-0303 (A.H.C. 10/28/83). The issue in this case was whether or not certain bricks shipped from a Missouri plant were subject to Missouri sales tax. It was necessary for the commission to determine where the sale took place. When no specific provision for the passage of title is contained in the agreement between the parties, the commission must look to other evidence such as industry practice, passage of risk of loss, party paying transportation costs and method and time of payment. The commission cited **Kurtz Concrete, Inc. v. Spradling**, 3560 SW2d 858 (Mo. banc 1978) and **Frontier Bag, Inc. v. Director of Revenue**, Case No. R-80-0073 (A.H.C. 11/12/81). Finding that the goods were shipped FOB from Mexico, Missouri, the commission held that petitioner manifested an intent to have title pass to the buyer at the time and place of shipment. The commissioner looked to section 400.2-401(2)(a), RSMo 1978 Uniform Commercial Code (UCC) in reaching this conclusion. Therefore, the sale did take place in Missouri and tax was applicable.*

***In Kurtz Concrete, Inc. v. Spradling**, 560 SW2d 858 (Mo. banc 1978) the court held while title ordinarily will not pass until property is delivered to buyer or reaches agreed place but title will pass notwithstanding that*

seller is to make delivery if such is the intention of the parties, the intention of the parties to control.

***Centrifugal and Mechanical Industries, Inc. v. Director of Revenue**, Case No. RS-85-1810 (A.H.C. 9/21/87). The taxable moment in Missouri is generally the moment of passage of title from seller to buyer. The parties may control this occurrence by their clearly expressed intent. This is best shown by a written agreement. Failing this, the taxpayer may show compelling evidence of industry practice. Taxpayer admitted no written agreement existed other than the invoice which said FOB-St. Louis. There was also no industry-wide practice shown.*

***Patton Tully Transportation Company v. Director of Revenue**, Case No. RS-85-1594 (A.H.C. 11/25/87). The parties intended that title to the rock would not pass to petitioner unless and until the stone was approved by the Army Corps of Engineers. It is the intent of the parties, by whatever means shown, that determines passage of title. The Administrative Hearing Commission determined no Missouri sales tax due on these transactions as title passed outside Missouri.*

***Tower Rock Stone Co. v. Director of Revenue**, Case No. RS-86-1011 (A.H.C. 4/7/88). The taxpayer contested the final decision of the director of revenue that its sales of stone were subject to Missouri sales tax.*

The Administrative Hearing Commission held that it was "industry practice" for the sale of the stone to be subject to approval by the Army Corps of Engineers. Citing 400.2—400.327, RSMo (1986) (UCC), the Administrative Hearing Commission stated that the sale of the stone was a "sale on approval" and therefore, title did not pass to the purchaser until the stone was inspected and accepted at the out-of-state job site.

12 CSR 10-3.152 Physicians and Dentists

PURPOSE: S.T. regulation 010-69 was the predecessor of this rule. This rule interprets the sales tax law as it applies to doctors and dentists.

(1) For purposes of the sales tax law, physicians and dentists are rendering services not subject to sales tax. Persons selling tangible personal property to physicians and dentists, such as instruments, bandages, syringes, furniture, equipment, filling materials, X-ray film and the like are subject to sales tax on the gross receipts from all these sales.

(2) Physicians and dentists acting as retail merchants by making sales of nonexempt drugs, toothbrushes and other similar property are responsible for collecting and remitting sales tax on the gross receipts derived from these sales. Physicians and dentists acting in this capacity should register with the Missouri Department of Revenue and issue exemption certificates for items purchased for resale. Purchases for resale subsequently used or consumed by the physician or dentist are subject to the applicable sales or use tax. The physician or dentist should accrue and remit this tax to the Missouri Department of Revenue.

(3) Physicians and dentists will be considered to have consumed items purchased for resale if these items are dispensed to clients for no charge at the same time a nontaxable service is provided by the physician and dentist.

(4) For purpose of this regulation, only pharmaceuticals and biologicals exhibiting the following legend will be considered exempt from sales/use tax as prescription drugs: "CAUTION: Federal Law prohibits dispensing without prescription" (per Section 503 of the Federal Food and Cosmetic Act).

(5) Physicians or dentists paying sales/use tax on purchases that are eventually sold at retail are required to collect sales tax on these sales but may apply for a refund for the sales/use tax paid at the time of purchase by the physician or dentist.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 68 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-69 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Dec. 9, 1981, effective April 11, 1982. Amended: Filed Feb. 13, 1985, effective June 13, 1985. Amended: Filed Dec. 22, 1988, effective June 11, 1989.*

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

***In Kilbane v. Director of Department of Revenue**, 544 SW2d 9 (Mo. banc 1976) the court held purchases by dental laboratories are for use and consumption of the professional and are subject to sales tax at time of purchase.*

***Larimore, Baker, Pettigrew & Associates, Inc. v. Director of Revenue**, Case No. R-80-0112 (A.H.C. 4/29/83). The issue in this case was the need for an optometrist to collect and remit the sales tax on the sale of lenses to its clients. The taxpayer argued that the lenses were part of the service and that petitioner was exempt. In support of its position taxpayer argued that the exemption provided by section 144.010.1(8), RSMo for purchases of tangible personal property made by duly licensed physicians, dentists and veterinarians used in the practice of their professions was applicable to optometrists and this was proved by the fact that the department previously had a regulation, Rule No. 68, in effect which until January 10, 1976 granted optometrists this exemption. The commission found that the express mention of physicians, dentists and veterinarians implied the exclusion of optometrists. Optometrists were not entitled to this exemption, and the department's regulation (which was repealed) was void, because it went beyond the authority granted by the statute.*

Petitioner's second argument was that it sold these lenses at cost and that any assessment should be limited in amount to its original purchase price for these lenses. The commission found that the sales price should not include overhead costs and overhead costs attributable to contact lenses such as the sales of lenses and overhead fairly attributable to these professional services and profit.

***W.H. Hopmeier, Inc. v. Director of Revenue**, Case No. RS-79-0295 (A.H.C. 7/19/82). The Department of Revenue is not required to give taxpayers notice of change in law and is not estopped from collection of tax by an unauthorized pronouncement of a department agent that assessments would not be made. Assessment for first five days in May 1979 are void because effective date of the statute was May 5, 1979.*

12 CSR 10-3.154 Optometrists, Ophthalmologists and Opticians

PURPOSE: This rule interprets the sales tax law as it applies to optometrists, ophthalmologists and opticians.

(1) Professional service rendered by optometrists and ophthalmologists are not subject to the sales tax.

(2) Persons selling tangible personal property or taxable services to optometrists, ophthalmologists and opticians for use or consumption in connection with their services are subject to the sales tax on the gross receipts from all these sales.

(3) Purchases by duly licensed optometrists and ophthalmologists of tangible personal property including eyeglasses, frames, lenses and ophthalmic materials, and used in the practice of their professions, are deemed to be purchases for use or consumption and not for resale.

(4) An ophthalmologist or optometrist, however, is considered to be a retailer of goggles, sunglasses, colored glasses or occupational eye protective devices, frames and any other tangible personal property sold to a patient or other customer and not used by the ophthalmologist or optometrist in his/her profession of diagnosis, treatment, correction and the like of the human eye.

(5) Sales by opticians of eyeglasses, frames, lenses and ophthalmic materials are considered to be retail sales regardless of whether or not the items are sold on prescription.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 68 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-70 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Emergency amendment filed Oct. 1, 1979, effective Oct. 11, 1979, expired Feb. 5, 1980. Amended: Filed Oct. 1, 1979, effective April 11, 1980.*

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

***Larimore, Baker, Pettigrew & Associates, Inc. v. Director of Revenue**, Case No. R-80-0112 (A.H.C. 4/29/83). The issue in this case was the need for an optometrist to collect and remit the sales tax on the sale of lenses to its clients. The taxpayer argued that the lenses were part of the service and that petitioner was exempt. In support of its position taxpayer argued that the exemption provided by section 144.010.1(8), RSMo for purchases of tangible personal property made by duly licensed physicians, dentists and veterinarians used in the practice of their professions was applicable to optometrists and this was proved by the fact that the department previously had a regulation, Rule No. 68, in effect until January 10, 1976 granted optometrists this exemption. The commission found that the express mention of physicians, dentists and veterinarians implied the exclusion of optometrists. Optometrists were not entitled to this exemption, and the department's regulation (which was repealed) was void, because it went beyond the authority granted by the statute.*

Petitioner's second argument was that it sold these lenses at cost and that any assessment should be limited in amount to its original purchase price for these lenses. The commission found that the sales price should not include that the costs and overhead costs attributable to contact lenses such as the sales of lenses and overhead fairly attributable to these professional services and profit.

12 CSR 10-3.156 Dental Laboratories

PURPOSE: This rule interprets the sales tax law as it applies to dental laboratories.

(1) Dental laboratories and others are exempt from sales tax on all sales of teeth or structures directly supporting teeth, including dentures, inlays, crowns, bridges and false teeth.

(2) Dental laboratories and others are subject to sales tax on the gross receipts from all other tangible personal property sold to a duly licensed physician or dentist for use in the practice of his/her profession, including any and all labor.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-71 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Kilbane v. Director of Dept. of Revenue**, 544 SW2d 9 (Mo. banc 1976). Sales tax was assessed on gold and porcelain crown and bridgework fabricated on prescription by dental laboratory for dentists. Fact that rule promulgated by director of revenue does not include crowns or bridgework, but does list several items and then adds "etc.", indicates that other things are included. It does not purport to list each and every kind of purchase which will be taxable. The fact that the item so used by the dentist retains its form does not mean that the doctor has not used it "in the practice of his profession." The court held purchases by dental laboratories are for use and consumption of the professional and are subject to sales tax at time of purchase.*

12 CSR 10-3.158 Sale on Installed Basis

PURPOSE: This rule interprets the sales tax law as it applies to sales made on an installed basis and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Persons, other than contractors, who sell tangible personal property on an installed basis are subject to sales tax on the entire gross receipts.

(2) Persons selling tangible personal property and who separately and independently contract to install the property are subject to sales tax on the sales price of the property but not on the installation charges.

(3) Example 1: Mr. Rodd is in the carpet business. Ms. Smith contacted Mr. Rodd about carpeting the living quarters in her yacht and he quoted her a price of nine dollars and ninety-five cents ($9.95) per square yard installed. Mr. Rodd is subject to sales tax on nine dollars and ninety-five cents ($9.95) per square yard installed.

(4) Example 2: Mr. Bumble decides to remodel his house with new siding. The local department store has a sale on siding and he purchases the desired quantity at the hardware department. He then goes to another department and arranges for the home improvement personnel of the store to install the siding. The local department store is subject to sales tax on the sale of the siding but not on the receipts under the installation contract.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 17 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-74 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***In Kurtz Concrete, Inc. v. Spradling**, 560 SW2d 858 (Mo. banc 1978) the court held while title ordinarily will not pass until property is delivered to buyer or reaches agreed place but title will pass notwithstanding that seller is to make delivery if such is the intention of the parties, the intention of the parties to control.*

12 CSR 10-3.160 Funeral Receipts

PURPOSE: This rule interprets the sales tax law as it applies to funeral receipts and interprets and applies section 144.010, RSMo.

(1) Persons such as undertakers and funeral directors are engaged in the business of selling tangible personal property and are subject to the sales tax on their receipts from caskets,

grave vaults, clothing, flowers and similar articles. Receipts from services rendered, such as embalming, hearse service, family cars and the like, are not subject to the sales tax when separately stated.

(2) Persons selling equipment, embalming fluids and any other supplies are subject to the sales tax on the gross receipts from all the sales when consumed or used by the undertaker or funeral director in performing his/her services.

AUTHORITY: section 144.270, RSMo (1994). This rule was previously filed as rule no. 82 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-75 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.162 Pawnbrokers

PURPOSE: This rule interprets the sales tax law as it applies to pawnbrokers and interprets and applies section 144.010, RSMo.

(1) A pawnbroker may be defined as one who loans money where tangible personal property is retained by the broker as collateral until an obligation is satisfied under agreed terms. If within a specified period of time, the pawnor reneges in the fulfillment of the agreed contract, the tangible personal property is forfeited and becomes the property of the pawnbroker. When forfeited property is subsequently sold by the pawnbroker, s/he is subject to the sales tax on the sale.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 29 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-76 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

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

***Martin Coin Co. of St. Louis v. Richard A. King**, 665 SW2d 939 (Mo. banc 1984). The court held in **Scotchmen's Coin Shop v. Administrative Hearing Commission**, 654 SW2d 873 (Mo. banc 1983) that sales of coins for their value as precious metal constituted the sale of personal property subject to sales tax. Martin Coin attempted to distinguish its activities from those of Scotchman's by asserting that it was an agent between two principals and that it was not a vendor, but merely a broker. Martin Coin purchased the coins in question on its own line of credit, was liable to the vendor of the coins, bore the risk of nonpayment by its customers, deposited the proceeds from the sales in its own bank account and paid the supplier for coins ordered. In the court's opinion, Martin Coin was involved in both (a) the purchase of coins from the supplier and (b) the sale of coins to customers. The latter constituted a taxable event. Additionally, the court noted that while Martin Coin attempted to label itself an agent, rather than a vendor, there was no evidence in the record to indicate that the vendors of the coins had any control over Martin Coin; thus a key element of agency was lacking. The court refused on procedural grounds to hear the issue which Martin Coin raised in its brief concerning invasion of the federal government's exclusive power to regulate foreign commerce.*

12 CSR 10-3.164 Installment Sales and Repossessions

PURPOSE: This rule interprets the sales tax law as it applies to installment sales and repossessions, and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Frequently, tangible personal property is sold by the seller under the terms of a written agreement or written contract and the purchaser agrees to pay for the merchandise in monthly payments. When these written agreements have been entered into and the seller has secured from the purchaser written evidence of this indebtedness, the seller is only required to submit sales tax to the director of revenue on the gross receipts received on the periodic payments and in determining the gross receipts charges incident to the extension of credit which are specifically exempted under the sales tax law.

(2) If the seller is on a gross sales method of reporting and the tax rate is changed between the date of the sale and the date installment payments are received, the tax rate in effect on the date of the sale is applicable. The seller must remit all tax during the month in which the sale was made.

(3) Example: Home Appliance Dealer A is on the gross sales reporting method. S/he sells a washer and dryer to customer B for eighteen hundred dollars ($1800). The sale takes place in December, but payments are made by Customer B over a six (6)-month period. The tax rate changes in January. The rate of tax in effect for December is applicable to the total gross sales on this transaction and sales tax must be reported in the month of December.

(4) If the seller is on a gross receipts method of reporting and the tax rate is changed between the date of the sale and the date installment payments are received, the tax rate in effect on the date of the sale is applicable. The seller must report gross receipts from all sales which occurred prior to the effective date of a tax change by filing an additional sales tax return for the month preceding the rate change. Sales tax owed shall be computed according to the tax applicable on the date of the sale. An additional sales tax return and sales tax owed must be remitted for each period in which installment receipts are received.

(5) Example: Home Appliance Dealer C is on a gross receipts reporting method. S/he sells a washer and dryer to Customer D for eighteen hundred dollars ($1800). The sale takes place in December, but payments are made over a six (6)-month period. The sales tax rate changes in January. Home Appliance Dealer C should charge the sales tax rate in effect at the time the sale was made. However, s/he must collect and report the sales tax during the months in which payment is received. In order to report sales tax on the sale made in December, Home Appliance Dealer C must file an additional sales tax return for the month of December for receipts received after the rate change. During the month of February, Home Appliance Dealer C must file his/her regular January sales tax return for receipts on cash sales made during the month of January. The sales tax on these receipts must be calculated at the new rate. Home Appliance Dealer C must also file an additional return for December for receipts received on installment sales made in December. The sales tax on these receipts must be calculated at the old sales tax rate.

(6) In those instances where the seller repossesses the property and sells the repossessed property at public or private sale, these sales are taxable.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 37 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-77 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed March 12, 1986, effective Aug. 25, 1986.*

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

12 CSR 10-3.166 Seller of Boats

PURPOSE: This rule interprets the sales tax law as it applies to sellers of boats and interprets and applies sections 144.010 and 144.070, RSMo.

(1) Persons in the business of selling boats, boat motors and other boat-related items are subject to the sales tax with the exception of boat trailers. The sales tax on the sale of boat trailers is collected by the Department of Revenue, Motor Vehicle Bureau, at the time the trailers are registered.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-77A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.167 Sales of Food and Beverages to and by Public Carriers

PURPOSE: This rule sets forth the tax responsibilities of persons who sell food 24 and beverages to airlines, the circumstances in which a seller of food and beverages may accept and rely upon and exemption certificate issued by an airline upon its purchases of those items, and includes the provision that public carriers exempt from sales tax by federal exemption are not subject to tax. This rule interprets and applies sections 144.010 and 144.030, RSMo.

(1) Sellers of food or beverages, delivered in Missouri to airlines for use in serving passengers or crew on aircraft without a separately stated charge for food or beverages being made by the airline, are subject to the sales tax on the gross receipts from all these sales.

(2) Airlines purchasing food or beverages to be served to passengers or crew on aircraft may issue a resale exemption certificate to their sellers only in those instances in which the airlines sell the food or beverages to its passengers or crew and charge them a separately stated amount for the food or beverages. Airlines which properly issue a resale exemption certificate to their sellers of food or beverages are subject to the sales tax on the gross receipts from all sales in this state of food or beverages to passengers or crew.

(3) Public carriers exempted from sales tax by federal statute are not subject to sales tax on gross receipts from sales in this state of food or beverages to passengers or crew. Example: Amtrak is not subject to sales tax on the gross receipts of sales in this state of food or beverages to passengers or crew.

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

(A) On all sales made on the ground in a commissary or club, tax should be collected on the sales price of the drink;

(B) The tax due on sales made in flight should be determined by multiplying the use tax rate (currently 4.225%) times the percentage of Missouri gross liquor revenues; and

(C) The Missouri gross liquor revenues shall be the airlines's total gross liquor revenue times the percentage of Missouri passenger miles (including flyover miles) to total passenger miles.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 14, 1976, effective Jan. 1, 1977. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed May 12, 1987, effective Aug. 27, 1987.*

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

12 CSR 10-3.168 Documentation Required

PURPOSE: This rule interprets the sales tax law as it applies to the documentation required for deductible transactions and interprets and applies sections 144.030 and 144.080, RSMo.

(1) Transactions which are deductible under the sales tax law can be deducted only if the transaction is documented so as to be capable of verification on audit.

(2) Example 1: Mr. Ray wished to claim a deduction on account of the sale of tangible personal property to an agency of the United States Government. Mr. Ray may deduct the sale if he can identify the source and amount of payment. The check stub may be sufficient for identifying the source of payment for audit purposes.

(3) Example 2: Snap Grocery Store makes a cash sale to Cool Cafe. Cool has issued the appropriate type exemption certificate. Snap Grocery may deduct the receipts from the sale if a ticket is prepared identifying the property purchased, the name of the customer, date, amount of the transaction and a signed exemption certificate.

(4) Example 3: M & M Motor Parts deducts receipts for sales made over the counter to cash customers who have delivered proper exemption certificates. A ticket is prepared by M & M indicating the date, amount and the items purchased. CASH is written in the space provided for the customer's name. The deduction would be disallowed; the transaction could not be related to a specific purchaser or exemption certificate.

(5) Example 4: Fast Motor Supply sells replacement parts and accessories to Good Used Cars. Good is registered only as a used car dealer. Good should execute an exemption certificate providing his/her dealer's number to Fast. Fast may then deduct the sales to Good from his/her gross receipts.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-79 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.170 Computer Printouts
(Rescinded November 12, 1977)

AUTHORITY: section 144.270, RSMo 1969. Rule last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed May 16, 1977, effective Nov. 12, 1977.

12 CSR 10-3.172 Advertising Signs

PURPOSE: This rule interprets the sales tax law as it applies to advertising signs and interprets and applies sections 144.010 and 144.021, RSMo.

(1) A firm is liable for sales tax on the rental receipts from the rental or leasing of advertising signs if sales tax was not paid at the time of purchase.

(2) A firm is subject to the sales tax on the gross receipts from the sale of advertising signs.

(3) Example: Pursuant to a contract with the lessee, the sign company sells and installs a sign on the building which advertises the lessee's business. The sign company is subject to sales tax on the entire gross receipts. S/he would not be treated as a contractor because the lessee has no real property interest in the land or building and the sale agreement would not, therefore, involve a fixture or improvement to real estate.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 74 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-81 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***State ex rel. Otis Elevator Co. v. Smith**, 212 SW2d 580 (Mo. banc 1948). Otis Elevator Company was in the business of designing, constructing, installing and repairing elevators in buildings. Respondent claimed there was no sales tax due to petitioner Smith because the materials used to construct new elevators or to modify existing elevators lost their character or status as tangible personal property and became a part of the real property coincidently with their delivery and attachment to the building. Respondent kept a title retention clause in his contract with the building contractor allowing him to retain title to the elevator until he was paid in full and if not, to remove the elevator. Judge Ellison held this clause prevented the tangible personal property from being joined with the realty. Absent this contractual clause, the court would have reached a different conclusion.*

Where the contract for installation of new elevators, and reconstruction or major repairs to existing elevators whereby elevator company retains title to materials until paid, the elevator company is liable for sales tax. Had the contract not contained the title retentions clause the elevator company would not be liable for sales tax.

*Where elevator company does repair work on existing elevators and supplies small parts which become part of the elevator, and does not retain title to the parts, the company is not subject to sales tax. The parts become part of the realty (see **Air Comfort Service, Inc. v. Director of Revenue**, Case No. RS-83-1982 (A.H.C. 4/25/84) and **Marsh v. Spradling**, 537 SW2d 402 (1976)).*

12 CSR 10-3.174 Stolen or Destroyed Property

PURPOSE: This rule interprets the sales tax law as it applies to stolen or destroyed 24 property and interprets and applies section 144.010, RSMo.

(1) When a seller's stock or inventory is stolen or is destroyed by fire or other casualty and the seller collects insurance on account of the loss, the seller is not subject to sales tax on the moneys received from the insurance company.

(2) When a seller's stock or inventory is destroyed or damaged and seller disposes of the damaged property at a reduced rate, the seller is subject to sales tax on the gross receipts from these sales.

(3) Example 1: Mr. Cind operates a grocery store and when inventory is taken he discovers that his inventory is five hundred dollars ($500) short. Mr. Cind collects four hundred dollars ($400) from his insurance company. Mr. Cind is not subject to sales tax.

(4) Example 2: Fire destroys Mr. J's stock of shirts which were purchased under a resale exemption certificate. Some of Mr. J's shirts were so badly burned that they had to be discarded; no sales tax is due on these shirts. However, some shirts were sold in a fire sale at a reduced rate. Sales tax is due on the gross receipts from the fire sale.

(5) Example 3: Mr. P bought a one hundred thousand dollar ($100,000) yacht. One (1) week later the yacht was totally destroyed by fire. The insurance company declares the yacht a total loss and gives Mr. P one hundred thousand dollars ($100,000) under one (1) insurance contract. Mr. P is not subject to sales tax on the one hundred thousand dollars ($100,000) and this is so even if, under the insurance agreement, Mr. P assigned the title to the wreckage to the insurance company.

(6) Example 4: Mr. Priss purchases a new sail boat for twenty thousand dollars ($20,000) and he takes his wife out to dinner. The boat is stolen while Mr. and Mrs. Priss are at the restaurant. When efforts to find the boat have been exhausted, the insurance company pays Mr. Priss twenty thousand dollars ($20,000) under the insurance policy on account of the theft. Mr. Priss assigns title to the stolen boat to the insurance company in the event that it is ever recovered. Mr. Priss is not subject to sales tax on account of the twenty thousand dollars ($20,000) from the insurance company and this would be the case even if the boat is subsequently found and turned over to the company.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-81A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.176 Fees Paid in or to Places of Amusement, Entertainment or Recreation

PURPOSE: This rule interprets the sales tax law as it pertains to the taxation of fees paid in or to places of amusement, entertainment or recreation.

(1) Definitions.

(A) Place of amusement is any location in which amusement activities comprise more than a *de minimus* portion of the business activities of the location (see *Spudich v. Director of Revenue*, 745 SW2d 677 (Mo. banc 1988) and *Soccer World West, Inc. v. Director of Revenue*, A.H.C. No. 89-001797RS (1990)).

(B) Amusement is a pleasurable diversion or entertainment (see *Spudich v. Director of Revenue*, 745 SW2d 677 (Mo. banc 1988)).

(C) Homeowners' association is a not-for-profit organization whose membership is limited to residential property owners or tenants in a specified development, subdivision or area, which provides services for the betterment of the development, subdivision or area or for the benefit of the property owners or their tenants.

(2) All fees or charges, including fees or charges paid for admission and seating accommodations, paid to or in any place of amusement, entertainment, recreation, game or athletic event are subject to sales tax when operated by for-profit and not-for-profit organizations as business activities. Service charges in addition to the stated ticket price on tickets sold for admission to places of amusement are subject to sales tax if levied by the operator or proprietor of the place of amusement. Service charges on tickets sold for admission to places of amusement levied by sellers or handlers other than the operator or proprietor of the place of amusement are not subject to sales tax. Tax on sales of all tickets, including season tickets, shall be collected and remitted by the seller at the time

payment for the tickets is received (also see 12 CSR 10-3.048).

(3) Example: A season ticket holder pays five hundred dollars ($500) for a season ticket entitling him/her to attend all home games of a team. The tax is computed on the five hundred dollar ($500) admission, whether or not the holder attends the games and regardless of the price at which the seat would have been sold for individual games.

(4) Some examples of fees or charges for admission or seating accommodations in or to places of amusement, entertainment or recreation include, but are not limited to, the following: any entrance charges, accommodation charges or other fees to gain entrance or access to theaters, fairgrounds, exhibition halls, rodeos, auto shows, races and tractor pulls, horse shows, boat shows, bowling alleys, operas, concerts, music shows, athletic contests and events (including running and bicycling races and tournaments), gymnasiums, fishing tournaments, zoos, dances, shooting galleries, tennis courts, roller and ice skating rinks, billiard and pool halls, handball courts, arcades, nontherapeutic massage parlors, campgrounds, card and other games, swimming pools, golf courses, circuses, carnivals, fairs, parks, amusement parks, resort complexes and other recreational attractions and entertainment including cover charges in nightclubs or taverns and rides on sightseeing helicopters, airplanes, balloons, boats and buses.

(5) No sales tax shall be imposed upon receipts from coin-operated amusement devices unless those devices are located within places of amusement, entertainment or recreation.

(6) Some examples of places which would not normally be treated as places of amusement include a hotel lobby, a restaurant, a motel, a laundromat, a convenience store, an airport, bus terminal or other similar places. However, if a location which would not normally be treated as a place of amusement has a department, room or similar area, which is geographically separated and set aside from the rest of the location through the use of walls, partitions, screens, fences or other partitioning, for amusement purposes or events, then the location will be presumed by the director of revenue to be a place of amusement. Any area, whether segregated or not, which contains fifteen (15) or more coin-operated amusement devices will be presumed by the director of revenue to be a place of amusement.

(7) The operator of a coin-operated amusement device located in a place of amusement, entertainment or recreation shall remit to the Department of Revenue sales tax upon only that portion of the proceeds derived from the coin-operated amusement device as is received by the operator, pursuant to the agreement between the operator and the proprietor of the place of amusement, entertainment or recreation. The proprietor shall remit to the Department of Revenue sales tax on his/her share of the proceeds; provided, that the operator of the device at any time does not gain control of all of the proceeds derived from the device and that the operator issue in duplicate a collection receipt, prepared by the operator, signed by both the proprietor and the operator at the time of the distribution of the proceeds. If this procedure is not followed, both the operator and the proprietor jointly shall be responsible for payment of sales tax on the entire amount of proceeds derived from the coin-operated amusement devices.

(8) Amounts paid by or to not-for-profit civic, social, service or fraternal organizations solely in their civic or charitable functions and activities are not subject to sales tax. All other fees or charges paid into a place of amusement operated by a not-for-profit civic, social, service or fraternal organization are subject to sales tax.

(9) Taxable fees and charges within a place of amusement include, but are not limited to, amounts paid for the use of snow skis, bowling shoes, roller or ice skates, golf carts, water skis, massage machines, lockers, tanning booths and other equipment and property, fees for billiards, bowling and amusement rides, green fees and tennis court fees, lift tickets, fees for sightseeing rides or flights and fees for separate amusement or recreation activities within resort complexes (also see 12 CSR 10-3.048).

(10) Example: Mr. A is the owner and operator of a bowling alley and purchases bowling shoes for use in operating the bowling alley. Mr. A shall pay tax on the purchase of the bowling shoes. When Mr. A charges his customers for the use of the bowling shoes, the usage fees are subject to sales tax as a fee paid in a place of amusement even though sales tax was previously paid on the purchase of the shoes.

(11) Specifically exempted from tax are amounts paid or charges for admission or participation or other fees paid by or other charges to individuals in or to any place of amusement, entertainment or recreation, games or athletic events, including museums, zoos and planetariums, owned or operated by a municipality or other political subdivision where all the proceeds derived from them benefit the municipality or other political subdivision and do not inure to any private person, firm or corporation (see section 144.030.2(17), RSMo).

(12) Amounts paid for lessons, whether within or not within a place of amusement, are not subject to sales tax. Examples of those lessons or other nontaxable activities include dance, karate, gymnastic, piano and singing lessons, haircuts, shoe polishing and child care. Notwithstanding this section, all amounts periodically paid in or to an organization as dues or noninstructional participation fees are subject to tax pursuant to section (2) of this rule.

(13) If a place of amusement is used by an outside organization which pays all fees within the place of amusement, the treatment of these fees is based on the tax status of the outside organization.

(14) Any amount paid for admission and seating accommodations or fees or charges in or to a place of amusement, entertainment, recreation, game or athletic event also are subject to all applicable local sales taxes in the same manner as the amounts paid are subject to the state sales tax. The location of the coin-operated amusement device, not the location of the owner of the device, determines the applicability of the local sales tax.

(15) Amounts paid in or to homeowners' associations specifically for admission to or use of amusement, entertainment or recreational facilities or events are subject to sales tax. Amounts paid in or to homeowners' associations for nonentertainment or nonrecreational services, such as subdivision security, street lights, snow removal, insurance, maintenance, utilities or trash removal are not subject to sales tax. If a homeowners' association charges each owner or tenant a set fee which covers operation and maintenance of all recreational and nonrecreational services and facilities, regardless if the owner or tenant makes use of the recreational facilities, the entire amount is not taxable.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 49 April 20, 1974, effective April 30, 1974. S.T. regulation 010-82 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded and readopted: Filed March 11, 1983, effective Sept.*

11, 1983. Amended: Filed May 10, 1984, effective Nov. 11, 1984. Amended: Filed Dec. 11, 1984, effective May 25, 1985. Emergency amendment filed Nov. 15, 1990, effective Nov. 25, 1990, expired March 24, 1991. Emergency rescission and rule filed Jan. 3, 1991, effective Jan. 13, 1991, expired May 13, 1991. Emergency rescission and rule filed May 3, 1991, effective May 13, 1991, expired Sept. 9, 1991. Rescinded and readopted: Filed Jan. 3, 1991, effective June 10, 1991.

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

***L & R Distributing, Inc. v. Missouri Department of Revenue**, 529 SW2d 375 (Mo. banc 1975). Places such as hotel lobbies, restaurants, motels, bus stations do not constitute a place of amusement or entertainment within meaning of statute imposing sales tax on fees paid to or in any place of amusement or entertainment and are not converted into such by the installation of coin-operated devices such as pinball machines.*

***Blue Springs Bowl v. Spradling**, 551 SW2d 596 (Mo. banc 1977). Commercial bowling establishment was place of amusement, entertainment or recreation mentioned in statute which provides for sales tax on receipts from amounts paid for admission to places of amusement, entertainment or recreation, as well as to games and athletic events, which imposes tax on receipts from fees paid to or in these places.*

***Chase Resorts, Inc. v. Director of Revenue**, Case No. RS-79-251 (A.H.C. 09/30/82). Taxpayer owns and operates the Lodge of the Four Seasons which provides certain activities and services including room rental, meal and bar service, convention facilities, golf, tennis, horseback riding, bowling and motion pictures. The Administrative Hearing Commission held the lodge to be a place of recreation, amusement and entertainment with section 144.020.1(2), RSMo. The commission noted that "each activity, in and of itself, represents a separate amusement or recreation, but each is related to and inseparable from the overall conduct of petitioner's resort." The moneys paid for the rentals in question such as rental of bowling shoes, horse and riding equipment, water skis and equipment, etc. also were held to constitute "fees paid to or in, any place of amusement, entertainment or recreation" as to be subject to sales tax pursuant to section 144.020.1(2), RSMo.*

***L & R Distributing Co., Inc. v. Missouri Department of Revenue**, 648 SW2d 91 (Mo. banc 1983). The department appealed from the judgement of the Circuit Court of the City of St. Louis finding the director in civil contempt for violating a 1974 injunction prohibiting the taxation of gross receipts of coin-operated amusement devices. The 1974 injunction was affirmed in **L & R Distributing Co., Inc. v. Missouri Department of Revenue**, 529 SW2d 375 (Mo. banc 1975). Subsequent to the decision in that case, the department had enacted sales tax rule 12 CSR 10-3.176 which provided that sales tax could be charged on the gross receipts of coin-operated amusement devices so long as they were located in places of amusement. The department relied on section 144.020.1(2), RSMo which imposed a sales tax upon the gross receipts of places of amusement. The court reversed the circuit court agreeing that the decision in **L & R Distributing** did not prohibit the taxation of gross receipts of places of amusement. The court found that section 144.020.1(2), RSMo placed a tax on all fees paid to or in places of amusement, including those paid for the use of coin-operated devices. Because the department was found to be correct on the merits, the court did not determine whether civil contempt was an appropriate remedy.*

***St. Louis Country Club v. Administrative Hearing Commission**, 657 SW2d 614 (Mo. banc 1983). The issue in this case was whether private country clubs which are not open to the public must pay sales tax on fees charged to members who bring guests to enjoy certain club facilities.*

The organization in question was an IRC Section 501(C)(7) not-for-profit tax-exempt corporation. Attendance at the club by non-members was strictly limited. Fees for golf and tennis were charged.

Before discussing the merits of the matter the court held that a) the director of revenue does not have to personally sign and issue each deficiency assessment; b) an opinion letter, which is not directed towards the taxpayer, written by an earlier director of revenue and which erroneously states the law does not stop an assessment by a later director of revenue; and c) the waiver of the statute of limitations entered into by the taxpayer was a valid contractual agreement supported by consideration and, therefore, it would be recognized.

With respect to the merits of the case, the taxpayer asserted that it should not be assessed tax because it is a private not-for-profit social organization which is not engaged in business and the guest fees are not paid to or in any place of amusement or recreation. Therefore, they did not fall within section 144.010.1(8), RSMo nor were they a business as defined in section 144.010.1(2), RSMo.

The court found without comment that the country club was a place of entertainment. With respect to whether it was a place of business, the court said that the definition of business contained in section 144.010.1(2), RSMo is special. The definition "any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage either direct or indirect" was found by the court to be broad enough to include the activity of allowing guests to use facilities for a fee. Allowing guests to use the facilities benefits the club by attracting members.

***City of Springfield v. Director of Revenue**, 659 SW2d 782 (Mo. banc 1983). The issue in this case was whether or not the director of revenue could legally assess sales tax on concession, admission and use fees charged by the city park board. The Supreme Court found first that Mo. Const. Art. III, Section 39(10), which prohibits a tax upon the "use, purchase or acquisition of property paid for out of the funds" of the city did not prohibit the imposition of tax upon the fees in question. There was no tax on the use, purchase or acquisition of property paid for from city funds. Secondly, the court found that section 144.020.1(2), RSMo brought the sale of recreational activities and concessions within the purview of the sales tax statute. The operation of the park and its facilities and services did constitute a business by a person making sales at retail and the park board did constitute a seller within the various definitions contained in section 144.010, RSMo.*

***National Land Management, Inc., v. Director of Revenue**, Case No. RS-81-0639 (A.H.C. 6/6/84). The issue in this case was whether time sharing arrangements at resorts are subject to sales tax. The commission initially found that the receipts in question were not taxable pursuant to section 144.020.1.(2), which provides for imposition of tax on a) sums paid for admission to places of amusement, b) sums paid for seating accommodations therein and c) all fees paid to or in place of amusement.*

Regarding the first provision, the commission found that the sums in question were not paid for "admission" as that term is commonly understood. The commission also found that accommodations were not the subject for which the sums were paid. With respect to the third provision, the commission found that the assessments did not apply to any separate "fees" charged for the use of

petitioner's amenities but were based on charges for the time share occupancies.

Next, the commission found that section 144.020.1(6) was inapplicable, because the payments in question did not constitute charges for rooms furnished in any hotel, motel, inn, tourist camp or tourist cabin. Arriving at this conclusion the commission held, "If the relationship is that of innkeeper and guest, then petitioner is providing a taxable service; if not, then petitioner's time share activities are not taxable under section 144.020.1."

Looking at the law from various states, the commission held that the agreements in question constituted vacation leases creating an assignable interest in real property. Because of the thirty-year lease, the occupants are not transitory in the sense that travelers or tourists are. Rooms in petitioner's resort are not regularly rented because they are only open to the general public when they are not already reserved pursuant to one of the previously mentioned agreements. Thus, the director of revenue failed to meet his burden of proof by establishing that the agreements in question constituted taxable service in the form of a room furnished at a hotel, motel, tourist camp or tourist cabin by an innkeeper.

***Fostaire Harbor, Inc. v. Missouri Director of Revenue**, 679 SW2d 272 (Mo. banc 1984). Taxpayer first challenged the commission's finding that fees paid for helicopter flights around the City of St. Louis were taxable fees paid to or in a place of amusement, entertainment or recreation, rather than fees paid for a tax-exempt educational service. Secondly, taxpayer asserted that even if tax liability existed, the finding of the commission that there was not neglect or refusal to file sales tax returns relieved it of any duty to pay interest on the amounts due.*

With respect to the first issue, the court held that the tax applies generally to fees paid in or to a place of amusement despite the fact that some educational benefit is derived at that place of amusement. That some educational value might be derived from the expenditure of a particular fee does not make it exempt from tax.

With respect to the second issue, the court held that interest is not a penalty and therefore a finding of neglect or refusal was not required before interest could be imposed. While interest might be a penalty under some circumstances, and thus could only be imposed upon a finding of neglect or refusal, such is not the case under Missouri's sales tax law.

***Richard Lynn, d/b/a Kansas City Excursion v. Director of Revenue**, 689 SW2d 45 (Mo. banc 1985). The issues in this case were whether 1) the taxpayer's receipts from its Missouri River boat excursions were exempt from sales tax under section 144.030.1, RSMo as receipts from activities in interstate commerce; 2) the director was estopped from assessing sales tax and penalties because of certain prior actions and statements by the director's agent; 3) the taxpayer was shielded from penalties by the exercise of good faith; and 4) the two-year statute of limitations applied to limit assessment prior to 1978.*

*The court resolved the interstate commerce issue by citing the decision in **Fostaire Harbor, Inc. v. Missouri Director of Revenue**, 679 SW2d 272 (Mo. banc 1984). **Fostaire** held that fees paid for admission to helicopter rides for sightseeing purposes are fees paid in or to a place of amusement and thus are taxable. The fees paid to the taxpayer in **Kansas City Excursion** were intended to provide a sightseeing tour, not transportation to a point outside the territorial waters of the state of Missouri; the interstate commerce provision of section 144.030.1, RSMo was therefore inapplicable to these local transactions.*

Regarding the estoppel issue, the court noted the long-standing rule that the director of revenue and his subordinates have no power to vary the force of statutes. Therefore, the actions of prior directors and their subordinates will not estop subsequent directors from collecting taxes due and owing the state except in situations where manifest injustice would otherwise occur.

In determining the issue of good-faith, the court found that the taxpayer had received an earlier assessment on the same issue and had been advised by counsel of a possible collection action. As the taxpayer was clearly on notice of a possible tax liability, failure to file in years subsequent to that assessment did not constitute good-faith, imposition of the penalty under section 144.250.1, RSMo for neglect to file a tax return was therefore appropriate. In addition, neglect or refusal to file returns tolls the statute of limitations in section 144.220, RSMo thereby permitting the assessment of sales tax in this case beyond the statutory period.

***Keeley's Park Rink, Inc. et al. v. Director of Revenue**, Case Nos. RS-84-2729, RS-84-2730 and RS-84-2731 (A.H.C. 02/26/87). The Administrative Hearing Commission held that the receipts from the rental of roller skates and coin-operated machines were subject to sales tax.*

***Bally's LeMan's Family Fun Centers, Inc. v. Director of Revenue**, 745 SW2d 683 (Mo. banc 1988). The court found that section 144.020.1(2), RSMo was clear and unambiguous in this case. The statute plainly provides for a sales tax to be imposed on all fees paid to or in places of amusement and the like. Since Bally's fun centers are places of amusement, moneys paid to Bally to operate coin-operated devices are fees paid to or in places of amusement.*

***Robert Philip Spudich, d/b/a Columbia Billiard Center v. Director of Revenue**, 745 SW2d 677 (Mo. banc 1988). The Supreme Court found that billiard halls are commonly thought of as places of amusement. The fact that revenues from the sale of food and drink exceed revenue from the sale of billiard table playing time does not reduce the billiard center's character as a place of amusement. The billiard table receipts were subject to sales tax.*

The court found that there was no equal protection violation. The state has a large leeway in making classifications and drawing lines which in its judgement produce reasonable systems of taxation. The taxation of coin-operated video machines in places of amusement but not in other nonamusement locations is reasonable in that the burdens and expenses of collecting sales tax from locations in which the fees collected for coin-operated amusement devices are minimal. The financial benefits to the state offset the minimal burden placed upon the coin-operated amusement devices located in places of amusement.

***Capitol Automated Ticket Services, Inc. v. Director of Revenue**, Case Nos. RS-84-1813 and RS-85-1778 (A.H.C. 09/12/88). The issue in this case considered whether sales tax could be imposed on "service charges" levied by the petitioner as a fee on the purchase of tickets to various events. The Administrative Hearing Commission determined that the "service charges" were a nontaxable service and not a fee charged for admission to a place of amusement.*

***Soccer World West, Inc. v. Director of Revenue**, Case No. 90-001797RS (A.H.C. 09/14/90). The issue in this case was whether fees paid by teams to participate in soccer league play were subject to sales tax as "fees paid to or in a place of amusement" or were exempt from the imposition of sales tax as "membership dues"? The Administrative Hearing Commission found that soccer clubs are places of amusement, membership dues are fees paid in or to a place of amusement*

and that there is no statutory exemption from sales taxes for "membership dues."

12 CSR 10-3.178 Dues Are Not Admissions
(Rescinded April 29, 1991)

AUTHORITY: section 144.270, RSMo 1986. S.T. regulation 010-83 was filed OCt. 28, 1975, effective Nov. 7, 1975. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Emergency rescission filed Nov. 15, 1990, effective Nov. 25, 1990, expired March 24, 1991. Rescinded: Filed Nov. 15, 1990, effective April 29, 1991.

***St. Louis Country Club v. Administrative Hearing Commission**, 657 SW2d 614 (Mo. banc 1983). The issue in this case was whether private country clubs which are not open to the public must pay sales tax on fees charged to members who bring guests to enjoy certain club facilities.*

The organization in question was an IRC Section 501(C)(7) not-for-profit tax-exempt corporation. Attendance at the club by non-members was strictly limited. Fees for golf and tennis were charged.

Before discussing the merits of the matter the court held that a) the director of revenue does not have to personally sign and issue each deficiency assessment; b) an opinion letter, which is not directed towards the taxpayer, written by an earlier director of revenue and which erroneously states the law does not stop an assessment by a later director of revenue; and c) the waiver of the statute of limitations entered into by the taxpayer was a valid contractual agreement supported by consideration and, therefore, it would be recognized.

With respect to the merits of the case, the taxpayer asserted that it should not be assessed tax because it is a private not-for-profit social organization which is not engaged in business and the guest fees are not paid to or in any place of amusement or recreation. Therefore, they did not fall within section 144.010.1(8), RSMo nor were they a business as defined in section 144.010.1(2), RSMo.

The court found without comment that the country club was a place of entertainment. With respect to whether it was a place of business, the court said that the definition of business contained in section 144.010.1(2), RSMo is special. The definition "any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage either direct or indirect" was found by the court to be broad enough to include the activity of allowing guests to use facilities for a fee. Allowing guests to use the facilities benefits the club by attracting members.

12 CSR 10-3.179 Separate Taxable Transactions Involving the Same Tangible Personal Property and the Same Taxpayer

PURPOSE: This rule identifies the circumstances when the sales tax would apply to tangible personal property in more than one instance under diverse transactions and interprets and applies sections 144.010, 144.020 and 144.021, RSMo.

(1) Separate incidences of sales tax may apply to the same tangible personal property where the property is the subject matter of entirely distinct transactions.

(A) Example: A taxpayer purchased new furniture for renovating its hotel. The taxpayer as purchaser must pay sales tax to the vendor of the furniture as well as collect sales tax from its customers on room charges (see *Chase Hotel, Inc. v. Director of Revenue*, Case No. RS-80-0042 (A.H.C. July, 1982)).

(B) Example: A taxpayer operates a bowling business. S/he must pay sales tax to the vendor on the purchase of bowling shoes for his/her business and s/he must collect sales tax on the rental fees on the shoes charged to customers in his/her place of amusement.

(C) Example: A taxpayer operates a golf course, a place of amusement. S/he must pay sales tax to the vendor on the purchase of golf carts for his/her business and s/he must collect sales tax on the cart rental fees charged to players.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

12 CSR 10-3.182 Excursions

PURPOSE: This rule interprets the sales tax law as it applies to excursions and interprets and applies sections 144.010 and 144.020, RSMo.

(1) The receipts derived from excursion boats, airplanes and helicopters are subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-85 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

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

***Fostaire Harbor, Inc. v. Missouri Director of Revenue**, 679 SW2d 272 (Mo. banc 1984). Taxpayer first challenged the commission's finding that fees paid for helicopter flights around the City of St. Louis were taxable fees paid to or in a place of amusement, entertainment or recreation, rather than fees paid for a tax-exempt educational service. Secondly, taxpayer asserted that even if tax liability existed, the finding of the commission that there was no neglect or refusal to file sales tax returns relieved it of any duty to pay interest on the amounts due.*

With respect to the first issue, the court held that the tax applies generally to fees paid in or to a place of amusement despite the fact that some educational benefit is derived at that place of amusement. That some educational value might be derived from the expenditure of a particular fee does not make it exempt from tax.

With respect to the second issue, the court held that interest is not a penalty and therefore a finding of neglect or refusal was not required before interest could be imposed. While interest might be a penalty under some circumstances, and thus could only be imposed upon a finding of neglect or refusal, such is not the case under Missouri's sales tax law.

***Richard Lynn, d/b/a Kansas City Excursion v. Director of Revenue**, No. 66130 (Mo. banc 4/30/85). The issues in this case were whether 1) the taxpayer's receipts from its Missouri River boat excursions were exempt from sales tax under section 144.030.1. as receipts from activities in interstate commerce; 2) the director was estopped from assessing sales tax and penalties because of certain prior actions and statements by the director's agents; 3) the taxpayer was shielded from penalties by the exercise of good-faith; and 4) the two-year statute of limitations applied to limit assessment prior to 1978.*

*The court resolved the interstate commerce issue by citing the decision in **Fostaire Harbor, Inc. v. Missouri Director of Revenue**, 679 SW2d 272 (Mo. banc 1984). **Fostaire** held that fees paid for admission to helicopter rides for sightseeing purposes are fees paid in or to a place of amusement and thus are taxable. The fees paid to the taxpayer in **Kansas City Excursion** were intended to provide a sightseeing tour, not transportation to a point outside the territorial waters of the*

state of Missouri; the interstate commerce provision of section 144.030.1. was therefore inapplicable to these local transactions.

Regarding the estoppel issue, the court noted the long-standing rule that the director of revenue and his subordinates have no power to vary the force of statutes. Therefore, the actions of prior directors and their subordinates will not estop subsequent directors from collecting taxes due and owing the state except in situations where manifest injustice would otherwise occur.

In determining the issue of good-faith, the court found that the taxpayer had received an earlier assessment on the same issue and had been advised by counsel of a possible collection action. As the taxpayer was clearly on notice of a possible tax liability, failure to file in years subsequent to that assessment did not constitute good-faith, imposition of the penalty under section 144.250.1 for neglect to file a tax return was therefore appropriate. In addition, neglect or refusal to file returns tolls the statute of limitations in section 144.220, thereby permitting the assessment of sales tax in this case beyond the statutory period.

12 CSR 10-3.184 Electricity, Water and Gas

PURPOSE: This rule interprets the sales tax law as it applies to the sale of electricity, water and gas, and interprets and applies sections 144.010, 144.020 and 144.030.2(23), RSMo.

(1) Sales for domestic use shall mean all sales of electricity, electrical current, natural, artificial or propane gas, metered water service, unmetered water service in St. Louis City, wood, coal and home-heating oil which an individual occupant of a residential premises uses for nonbusiness, noncommercial, or nonindustrial purposes. These domestic purchases are exempt from state sales tax.

(2) The basic rate paid or charged on all sales of electricity, electrical current, water and natural or artificial gas for commercial or industrial consumption is subject to the sales tax whether the seller is a private, municipally-owned or rural electric cooperative or water district. Industrial consumption includes use in manufacturing, processing, compounding, mining, producing, refining, building, construction, irrigation and the like.

(3) Where electricity, water or gas is sold from a single meter to a single purchaser for two (2) or more purposes, the predominant use for which the sale is made through each meter shall determine its taxable status for the seller. Where the purchaser has all the electricity, water or gas used at a given location furnished through a single meter, the purchaser is responsible for determining that portion of the electricity, water or gas which is for domestic, commercial or industrial consumption. When the purchaser has all the electricity, water or gas furnished through a single meter for use at residential apartments or condominiums, including service for common areas and facilities and vacant units, the usage shall be deemed domestic use. If the predominant use of a single meter is for an exempt purpose and no tax is collected from the purchaser by the seller with respect to that meter, the purchaser is responsible for all sales taxes due to that portion which is not exempt. The purchaser should file a sales tax return showing the total amount of electricity, water or gas consumed and the amount claimed as an exemption.

(4) All basic rate charges for electricity, water or gas are subject to the sales tax whether actually consumed or not, including any advance or equalized payment, surcharge, minimum or flat rate. Meter deposits and separately stated service charges are not subject to the sales tax. Receipts from services rendered by utilities, such as installation and repair, are not subject to sales tax when clearly segregated and separately stated from parts or material on the billing or invoice. Any franchise, occupation, sales, license, excise, privilege or similar tax or fee of any kind which is not part of the basic rate paid or charged is not subject to the sales tax.

(5) Sewer service is not taxable and the inclusion of that service charge on water bills is not a part of the basic water rate subject to the sales tax.

(6) Sales of electricity, water or gas to licensed or regulated utilities or common carriers, such as water or pipeline companies, telephone and telegraph companies and railroads, are subject to sales tax.

(7) Example 1: Mr. Jones owns an apartment house which is serviced through a single meter. Mr. Jones charges his tenants a basic rent and he also charges extra for electricity. Mr. Jones is entitled to a domestic use exemption for the electricity purchased for the residential apartments, including service for common areas and facilities and vacant units.

(8) Example 2: Mrs. Smith owns a large home. She rents out the room above the garage to a local student and she operates a beauty parlor in her basement. The home is serviced by a single meter and sixty percent (60%) of the electricity is used by Mrs. Smith for her personal use, twenty-five percent (25%) for her beauty parlor and fifteen percent (15%) for the rental unit. Because the predominant use of the electricity is for domestic use, Mrs. Smith does not pay any sales tax on her monthly bills. Mrs. Smith must file a sales tax return and pay sales taxes on the twenty-five percent (25%) which is not exempt and the tax return should be filed at the same time as her state income tax return (April 15 of the following year).

(9) Example 3: Assume the same facts as in section (8) except that twenty-five percent (25%) of the electricity is for domestic use and seventy-five percent (75%) is for nondomestic use in the beauty parlor. Because the predominant use of the electricity is for nondomestic use, Mrs. Smith pays sales taxes to the utility company on her entire bill. Mrs. Smith should file a request for refund between January 1 and April 15 of the following year to obtain a refund of sales taxes paid on the domestic use portions of her electricity purchases—twenty-five percent (25%).

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 55 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-86 was last filed Dec. 3, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Dec. 30, 1983, effective April 12, 1984. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995.*

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

***Hyde Park Housing v. Director of Revenue**, 850 SW2d 82 (Mo. banc 1993). Taxpayers appealed a decision of the Administrative Hearing Commission which upheld assessments of sales tax and interest on purchases of electricity used in occupied and vacant apartments. The Missouri Supreme Court held "The plain and ordinary meaning of the 1986 amendment to section 144.030.2(23) is clear and unambiguous: purchased metered electricity sold under a residential tariff is considered as a sale made for domestic use and is exempt from sales tax." The court also held the exemption is not limited to natural*

persons and applies without regard to who made the purchase.

12 CSR 10-3.186 Water Haulers

PURPOSE: This rule interprets the sales tax law as it applies to water haulers and interprets and applies section 144.010, RSMo.

(1) Persons who purchase water for resale and deliver the water are subject to the sales tax on the entire charge to a final user or consumer.

(2) Persons who do not sell water but merely contract to haul water for others are not subject to sales tax for the hauling.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-87 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.188 Telephone Service

PURPOSE: This rule interprets the sales tax law as it applies to telephone service and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Telephone companies are subject to sales tax on the basic rate paid by telephone subscribers for the act or privilege of originating or receiving intrastate messages and conversations in this state, whether local or long distance, and are subject to sales tax on amounts paid for all services and equipment provided in connection with telephone service.

(A) The sales tax rate for noncellular telephone service is based upon the service address. Service address means, except as in subsections (1)(B)—(D), the location of the telephone equipment from which the noncellular telephone service originates.

(B) The sales tax rate for noncellular intrastate collect calls is based upon the service address which is billed for the call.

(C) Intrastate credit card calls are taxable and will be taxed according to the service address from which the telephone service originates.

(D) Due to the fact that current technology does not allow a taxpayer to determine the service address for cellular telephone service, including mobile car phones, maritime systems, air-to-ground systems and the like, the sales tax rate shall be determined by the billing address of the customer billed for the call as defined by telephone number, authorization code or location in Missouri where bills are sent. Cellular telephone service, both incoming and outgoing, consists of the service between the cellular telephone, the cell sites and the mobile telephone switching office (MTSO) (see section (12) for taxation of roamer cellular telephone service charges).

(E) Example: An individual from Texas places a call from the Kansas City, Missouri airport to St. Louis, Missouri and charges the call to a credit card with a billing address in Texas. The caller should be billed Missouri sales tax at the rate in effect at Kansas City, Missouri.

(F) Example: A cellular telephone customer with a billing address in Kansas City, Missouri places a call to St. Louis, Missouri from a cellular telephone located in his/her automobile while driving in Kansas City, Missouri. The charges for cellular telephone services are subject to sales tax based upon the billing address of the customer in Kansas City, Missouri. All other telephone service charges (noncellular) are based upon the general service address rules set forth here. This applies regardless of whether the call is placed with or without a credit card. However, if the call is placed as a collect call to a St. Louis, Missouri location, then the noncellular telephone service charges are subject to sales tax at the rate in effect at the billing address of the receiver.

(2) Sales tax applies to all charges for minimum monthly service, service connections and disconnections, tariff telephone directory listings, equipment such as telephones, computer modems, deaf set extensions, special speakers and any other equipment furnished in conjunction with furnishing or enhancing telephone service. The applicable tax rate will be determined by the location of the equipment. Example: John Doe is charged six dollars and ninety cents ($6.90) per month for his home telephone service. The six dollars and ninety cents ($6.90) consists of six dollars ($6) for line charges, fifty cents (50¢) for the telephone monthly service charge and forty cents (40¢) for federal excise tax. Sales tax would be due on the six dollars ($6) and the fifty-cent (50¢) charge for the telephone. The tax rate would be based on where the telephone is located.

(3) The sale of tangible personal property, such as a telephone, shall be treated as a retail sale and the tax rate applicable will be based on the business location of the seller. Example: The Expo Telephone Company operates a telephone sales and service office which sells telephones to the public on a retail basis. The company should charge tax at the time a sale is made based upon the location of the store. The rental of tangible personal property, when billed separately from telecommunication service, shall be treated as all other rentals for purposes of sales tax (see 12 CSR 10-3.226).

(4) Sales tax applies to customer access charges billed to the user of any telephone line, whether the line is used for intrastate or interstate messages. These access charges include user access line charges for WATS lines, residential and business user access charges and access charges for the use of long distance services. Provided, however, sales of access or similar service to telecommunications companies which will be used to provide telecommunications service are not subject to tax and are considered to be for resale.

(A) Example: A one dollar ($1) access charge is added to each customer's bill every month. This represents a federally mandated charge for the interstate telephone network. The one dollar ($1) would be subject to tax based on the location of the telephone.

(B) Example: XYZ Long Distance Company charges its subscribers two dollars ($2) per month to access their interstate telephone lines. The two dollars ($2) would be subject to sales tax based on the rate where the telephone is located.

(C) Example: Doe Company pays fifty dollars ($50) per month in end user access line charge for a WATS line. If the charge is for a WATS line accessed through telephone equipment located in Missouri, it would be subject to tax based upon the location of the telephone equipment used by the subscriber to access the WATS line.

(5) Receipts of telephone companies for telephone transmissions made through public pay telephones are not subject to sales tax. Receipts for telephone transmission made through semipublic pay telephones are subject to the sales tax. For purposes of this section, public pay telephones and semipublic pay telephones shall mean—

(A) Public pay telephones refer to an exchange station installed at the telephone company's option, in charge of an attendant, or equipped with a coin collection or other billing device at a location chosen by the telephone company as suitable and necessary for furnishing service to the general public and for this telephone no listing in a phone directory is generally allowed. Telephone company includes any telecommunications company authorized by the Missouri Public Service

Commission to provide pay telephone service in Missouri;

(B) Semipublic telephone shall mean and refer to a business subscriber station, equipped with a coin collection device, designed for a combination of subscriber and public usage, which telephone is located where it may be collectively used by guests, members, employees, boarders, students or other occupants, as well as the subscriber, and for which the subscriber is entitled to a directory listing for purposes of incoming calls and business purposes. The definition of semipublic telephones in this rule also includes customer-owned coin telephones at locations accessible to the public, irrespective of whether or not the coin-operated telephone is designed for use by the subscriber. A customer-owned coin telephone is a phone owned by a person other than a telecommunication company authorized by the Missouri Public Service Commission to provide pay telephone service in Missouri; and

(C) The price charged for a telephone call shall be considered to be inclusive of the applicable sales tax which shall be calculated using the sales tax rate in effect for the location of the pay telephone. Due to the method of payment for pay telephone service, it is not necessary that the amount of sales tax be stated separately and it is not necessary that a notice be placed on telephones which advises users that sales tax is included in the rate. Telephone companies may apply to the director of revenue for permission to use a special accounting method to compute the amount of sales tax due based upon statistical sampling.

(6) Sales tax shall apply to the basic rate charged including any advance or equalized payment, surcharge, minimum or flat rate. Any franchise, occupation, sales, license, excise, privilege or similar tax of any kind, which is not a part of the basic rate is not subject to the sales tax. This does not exclude access charges from taxation.

(7) All intrastate telephone service is taxable. Intrastate cellular telephone service for origination or termination of a call is subject to Missouri sales tax whether or not the call is subsequently transmitted instate or out-of-state by a separate seller of telephone service. An interstate call shall be considered any transmission originating within this state and destined to a point outside of Missouri or any transmission originating outside of this state and terminating at a location within this state whether the service is provided by a single seller or by two (2) sellers participating in the transmission of the call. When a customer is billed for intrastate and interstate calls as a lump sum, and charges for each are not readily ascertainable, the entire amount of the charge is subject to the sales tax.

(A) Example: Ms. Doe receives a bill for toll calls covering the month of January. The bill is for forty dollars ($40) and does not segregate interstate and intrastate calls. The entire forty dollars ($40) would be subject to sales tax.

(B) Example: A cellular telephone customer with a Kansas City, Missouri billing address places a call to Denver, Colorado from a cellular telephone located in his/her automobile while driving in Kansas City, Missouri. The portion of the call relating to separately billed cellular telephone service to transmit the call from the automobile through the transmitting cell sites in the Kansas City area and then to the MTSO in Kansas City, Missouri is subject to sales tax based upon the billing address of the cellular telephone service customer. The interstate portion of the call relating to telephone service from the MTSO over land lines to the Denver, Colorado destination point is not subject to sales tax. If the intrastate and interstate portions are not separately stated to the customer and are not otherwise ascertainable, the entire charge is taxable.

(8) Receipts derived from charges for tariff telephone directory listings are subject to sales tax if a separate charge is made for the listing. Example: Company B which is located in Warrensburg places its name in the Jefferson City directory and is billed six dollars ($6) for this service. The six dollar-($6) charge would be subject to sales tax in its entirety. The tax rate applicable will be based on the domicile of the subscriber.

(9) In situations where telegrams are billed through a telephone subscriber's account, these charges are subject to sales tax and are to be included in the measure of tax by the telegraph company. The tax rate applicable will be based on the service address for non-cellular telephone service and will be based on the billing address of the subscriber as defined by telephone number, authorization code or location in Missouri where bills are sent for cellular telephone service.

(10) A subscriber of telephone service is any individual, business, corporation or other entity who uses, or maintains for use, equipment necessary to transmit information over telephone lines. Telephone lines refer to any means of transmitting telephone messages, including, but not limited to, wire, radio transmission, microwave and optic fiber technology.

(11) Telephone service applies to the service ordinarily and popularly ascribed to it including, without limitation, the transmission of messages and conversations through use of local, toll and wide area telephone service; private line services; land line services; cellular telephone services; and maritime and air-to-ground telephone service. Telephone service includes the transmission of information over telephone lines and other telephonic media for facsimile transfers. Telephone service does not include value-added services including computer processing applications used to act on the form, content, code and protocol of the information for purposes other than transmission.

(12) Notwithstanding any other provisions of this rule, roamer cellular telephone service charges are subject to sales tax as follows: A cellular telephone company providing roamer cellular telephone service to the customer of a different cellular telephone company shall collect and remit sales tax based on the location of the MTSO that receives and transmits the cellular telephone signals. The sales tax shall apply to all roamer cellular telephone service provided in Missouri.

(A) Example: A cellular telephone customer/subscriber of a Denver, Colorado cellular telephone company places a cellular telephone call from his/her automobile while driving in St. Louis, Missouri. The call is received and transmitted by the MTSO of a St. Louis, Missouri cellular telephone company. The MTSO is located in St. Louis, Missouri. The St. Louis cellular telephone company bills the Denver, Colorado cellular telephone company for the call, which in turn bills the Denver customer/subscriber. The St. Louis cellular telephone company shall collect and remit sales tax on the amounts billed to the Denver, Colorado cellular telephone company based upon the location of the MTSO in St. Louis.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 57 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-87A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed April 2, 1985, effective July 1, 1986. Amended: Filed Jan. 5, 1987, effective April 11, 1987. Amended: Filed July 20, 1987, effective Oct. 25, 1987. Emergency amendment filed Feb. 11, 1991, effective Feb. 21, 1991, expired June 20, 1991. Emergency amendment filed June 11, 1991, effective June 21, 1991, expired Oct. 9, 1991. Amended: Filed Feb.*

11, 1991, effective Sept. 30, 1991. Amended: Filed Dec. 2, 1992, effective Aug. 9, 1993.

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

***Mobile Radio Communications, Inc. v. Director of Revenue**, Case No. RS-79-0199 (A.H.C. 12/16/82). The commission held that mobile radio service does not constitute taxable "Service to telephone subscribers and to others through equipment of telephone subscribers" under section 144.202.1(4), RSMo. The commission interprets that language to mean that the purchaser must be receiving telephone service through telephone equipment. Radio service is not telephone service. Furthermore, according to the commission, the telephone land lines petitioner used were private circuits used solely in connection with the petitioner's transmission of signals and were not connected or otherwise tied into Southwestern Bell's telephone system. Additionally, the court held that petitioner was not liable for sales tax on the receipts from the rental of pagers and mobile radios, because petitioner had purchased the pagers and mobile radios under the conditions of sales at retail and paid tax on them pursuant to section 144.020.1(8), RSMo.*

12 CSR 10-3.192 Seller's Responsibilities

PURPOSE: This rule provides guidelines for the seller's responsibilities and interprets and applies sections 144.010, 144.021, 144.080 and 144.210, RSMo.

(1) The burden of proving that a sale of tangible personal property or taxable services was made for resale and not retail shall be upon the seller. The burden of proving that a retail sale of tangible personal property or taxable services was exempt under the sales tax law shall be upon the person claiming the exemption. The seller is required to secure and retain a signed exemption certificate from the purchaser as evidence that the sale is made for resale or otherwise exempted from the sales tax. Acquiring only the Missouri sales tax license number of a letter stating the purchaser will be responsible for the tax is not sufficient proof by itself that the sale is exempt.

(2) When the Department of Revenue has reason to believe the seller acted not in good faith in the acceptance of an exemption certificate, the department is empowered to make an additional assessment of tax due from the seller. When the seller has been determined to have acted not in good faith, both seller and purchaser will be held liable until all liabilities have been satisfied.

(3) The seller must indicate on each invoice or bill of sale the name of each purchaser from whom an exemption certificate has been secured or be subject to the sales tax upon the sale.

(4) Exemption certificates must be available at the establishment of the seller for ready inspection and comparison with the deductions claimed. A seller, duly registered under the provisions of the Sales Tax Act and continually engaged in the business of selling tangible personal property or taxable services at retail, must present an exemption certificate to his/her wholesaler or supplier as to his/her registration as a retailer. The purchaser shall not be required to execute additional certificates of resale for individual purchases as long as there is no change in the character of his/her operation and the purchases are of tangible personal property or taxable services of a sort usually purchased by him/her for resale.

(5) A seller who accepts, in good faith, a signed exemption certificate from the purchaser as authorized under this rule is relieved of all liability on account of any erroneous claim of exemption and the purchaser or other person claiming exemption will be solely responsible for all taxes, interest and penalty due.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 86 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-89 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***P.F.D. Supply Corporation v. Director of Revenue**, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and non-reusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The commissioner, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.*

*Relying on its previous decision in **Blueside Co. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84), the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to **Blueside**, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.*

*However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in **Overland Steel, Inc. v. Director of Revenue**, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, Art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the **Overland Steel** case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2) in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.*

Finally, the commission held that non-reusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on such items.

12 CSR 10-3.194 Multistate Statutes

PURPOSE: This rule provides that the Multistate Tax Compact relating to sales and use taxes is applicable in Missouri, and interprets and applies section 32.200, RSMo.

(1) The provisions of the Multistate Tax Compact section 32.200, RSMo applicable to sales and use taxes are fully applicable in Missouri.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-90 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***P.F.D. Supply Corporation v. Director of Revenue**, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The commissioner, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.*

*Relying on its previous decision in **Blueside Co. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84), the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to **Blueside**, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the "user" and the sale to that restaurant was a taxable retail sale.*

*However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in **Overland Steel, Inc. v. Director of Revenue**, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, Art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the **Overland Steel** case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2), in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.*

Finally, the commission held that nonreusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on such items.

12 CSR 10-3.196 Nonreturnable Containers

PURPOSE: This rule interprets the sales tax law as it applies to nonreturnable containers and interprets and applies section 144.011(9), RSMo.

(1) Sales of nonreturnable containers to persons who use them to package tangible personal property so that the containers become part of the products ultimately sold are sales for resale. The buyer of this type of container may give a sale for resale exemption certificate for the containers which s/he purchases. Thus, a seller, who sells nonreturnable containers to a person who has delivered a sale for resale certificate and uses the containers in packaging goods which are then sold to consumers may deduct the receipts from his/her sales.

(2) Example: The sale of disposable bottles to a bottler for use in bottling beverages is a sale for resale and is not subject to the sales tax.

(3) Also, a retail sale does not encompass the purchase, by persons operating eating or food service establishments, of items of a nonreusable nature which are furnished to the customers of those establishments with or in conjunction with the retail sales of their food or beverage. This exemption includes, but is not limited to, wrapping or packaging materials and nonreusable paper, wood, plastic and aluminum articles such as containers, trays, napkins, dishes, silverware, cups, bags, boxes, straws, sticks and toothpicks.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Smith Beverage Co. of Columbia, v. Reiss**, 568 SW2d 61 (Mo. banc 1978). Bottlers were not required to pay a use tax on reusable soft drink bottles purchased from outstate suppliers and transferred to retailers for sale to consumers, since these transactions fall within the purchase for resale exemption.*

***King v. National Super Markets, Inc**., 653 SW2d 220 (Mo. banc 1983). The purchase of paper bags by a supermarket was considered to be a purchase for resale because they are transferred to the supermarket's customers for consideration, since customers pay an increased price in exchange for the quantity of bags required to bag their purchases. Since **National** was including the cost of the bags as part of the gross taxable sale, the purpose of the use tax would not be achieved by allowing its imposition in this case.*

12 CSR 10-3.198 Returnable Containers

PURPOSE: This rule interprets the sales tax law as it applies to returnable containers and interprets and applies sections 144.010 and 144.011(9), RSMo.

(1) No sales tax is due on the sale of reusable containers for which a deposit is required and refunded on return. The term encompasses returnable bottles for beverages and returnable soft drink bottle cases.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Smith Beverage Co. of Columbia, Inc. v. A. Gerald Reiss**, 568 SW2d 61 (Mo. banc 1978). Bottlers were not required to pay a use tax on reusable soft drink bottles purchased from outstate suppliers and transferred to retailers for sale to consumers, since these transactions fall within the purchase for resale exemption.*

12 CSR 10-3.200 Wrapping Materials

PURPOSE: This rule interprets the sales tax law as it applies to wrapping materials and interprets and applies section 144.011, RSMo.

(1) Persons selling bags, boxes, paper, twine and similar articles to persons who use the materials to package merchandise for subsequent sale are not subject to sales tax on these sales. A grocer, for instance, who purchases trays and see-through wrapping paper to package meat for subsequent sale may purchase the items under a resale exemption certificate.

(2) Persons who purchase bags, boxes, paper and similar articles to package their own goods for subsequent use or consumption or to package the goods or merchandise for others should not purchase those items under a resale exemption certificate. A store which provides a complimentary gift wrapping department for customers who have purchased goods in other departments of the store should pay sales tax on the wrapping materials at the time of purchase.

(3) Specifically exempted under the law are purchases by persons operating eating or food service establishments of nonreusable items furnished to their customers with or in conjunction with the retail sales of food or beverage.

(4) Retailers purchasing bags, boxes and similar articles to be used for packaging customers' purchases may purchase the items under an exemption certificate (see *King v. National Super Markets, Inc.*, 653 SW2d 220 (Mo. banc 1983)).

(A) Example: A grocer may purchase grocery bags tax exempt.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Oct. 15, 1985, effective Jan. 26, 1986. Amended: Filed July 14, 1986, effective Nov. 28, 1986.*

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

***Rival Manufacturing Co. v. Director of Revenue**, Case No. RS-81-0522 (A.H.C. 6/4/83). The issue in this case was the imposition of sales and use tax on shippers (boxes to ship multiple items) which taxpayer used to send crock pots to its customers. The controlling issue in this case was whether or not the shippers were purchased by the petitioner at retail (for its own use and consumption) or purchased for resale (to be sold to its customers). If they were purchased for resale, they were exempt from taxation. The commission cited the three-part test of **Smith Beverage Co. v. Reiss**, 568 SW2d 61 (Mo. banc 1978) for determining if purchases were for resale. The three parts of that test are: 1) a transfer, barter or exchange of title; 2) of tangible personal property; 3) for consideration.*

The Department argued that the third part of the test had not been met because consideration must be bargained for. They were part of petitioner's overhead and they were optional. The purchasers did not bargain for the shippers because it did not bargain for a particular mode of shipment. The commission found that the cost of the shippers was part of the selling price of the items purchased. They were transferred for a consideration. The court concluded that the shippers were exempt from tax because they were not purchased at retail, but were purchased for resale.

***King v. National Super Markets, Inc**., 653 SW2d 220 (Mo. banc 1983). The purchase of paper bags by a supermarket was considered to be a purchase for resale because they are transferred to the supermarket's customers for consideration, since customers pay an increased price in exchange for the quantity of bags required to bag their purchases. Since **National** was including the cost of the bags as part of the gross taxable sale, the purpose of the use tax would not be achieved by allowing its imposition in this case.*

12 CSR 10-3.202 Pallets

PURPOSE: This rule interprets the sales tax law as it applies to pallets and interprets and applies section 144.010, RSMo.

(1) Sales of pallets are subject to sales tax unless purchased under conditions of sale for resale.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-4 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Floyd Charcoal Co. v. Director of Revenue**, 599 SW2d 173 (1980). Appellant charcoal company purchased pallets upon which charcoal packages were loaded for sale to its customers and claimed an exemption from the payment of sales tax on its initial purchase of the pallets as being purchases for resale to its customers. The assessment of sales tax was upheld since the charcoal company maintained the practice of crediting the customer's next purchase for each pallet returned to it.*

***Kaiser Aluminum & Chemical Corp. v. Director of Revenue**, Case No. RS-82-0068 (A.H.C. 10/28/83). The issues in this case were the taxability of the purchase and subsequent transfer of certain pallets which petitioner used to stack its bricks upon as they were transferred to customers. The commission based its conclusions of law upon a factual finding that the pallets were indeed sold to its customers. Because the pallets were sold to petitioner's customers, the resale exemption certificates which the petitioner presented at the time it purchased the pallets in question were valid. In reaching this conclusion, the commission held that the statutory definition accorded the word sale was applicable to the term resale as well, reasoning by analogy from the decision in **Smith Beverage Co. v. Reiss**, 568 SW2d 61 (Mo. banc 1978). In making its factual finding the commission noted that while the petitioner's customers could have returned the pallets for a deposit they were under no obligation to do so, and additionally, that for accounting purposes the transfer of pallets was treated as sales.*

The other issue addressed in the case was whether or not the sale of the pallets constituted sales at retail which would be subject to sales tax. Petitioner contended that its subsequent sale of the pallets was exempt because they constituted reusable containers. The commission upheld 12 CSR 10-3.020(2) which provides that pallets are not exempt. The commission pointed to the language in section 144.011.1, RSMo which requires that the containers be sold with "tangible personal property contained therein." Because goods are not contained in pallets the commission held that they did not constitute containers and were nonexempt.

12 CSR 10-3.204 Paper Towels, Sales Slips

PURPOSE: This rule interprets the sales tax law as it applies to sales of paper towels, sales slips and like items, and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Sales of paper towels, toilet tissues, sales slips and similar items to businesses are subject to sales tax unless resold.

(2) Example 1: The Book and Stationery Store is engaged in the business of selling office supplies. Among the items which it carries for sale to other merchants are sales slips. B & S purchases the sales slips from Y Company. Y Company will be allowed to treat the sale of slips to B & S as sales for resale if it has received a sale for resale exemption certificate. The sales slips which B & S sells to its customers are subject to sales tax.

(3) Example 2: B & S uses some of the sales slips which it purchases to record transactions between itself and its customers and to bill the customers. B & S must pay sales tax on these sales slips which it uses or consumes.

(4) Example 3: The Fast Food Burger Bar purchases paper towels and toilet tissue for its public restroom. Fast Food must pay sales tax on these items at the time of purchase.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 011-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.206 Bottle Caps and Crowns

PURPOSE: This rule interprets the sales tax law as it applies to sales of crowns and caps, and interprets and applies section 144.011, RSMo.

(1) The sale of caps or crowns to persons who use them in bottling soft drinks are sales for resale. The sale of the bottled beverage to a person selling the beverage for ultimate consumption is also a sale for resale.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-6 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Smith Beverage Co. v. Reiss**, 568 SW2d 61 (Mo. banc 1978). Bottlers were not required to pay a use tax on reusable soft drink bottles purchased from outstate suppliers and transferred to retailers for sale to consumers, since these transactions fall within the purchase for resale exemption.*

12 CSR 10-3.208 Crates and Cartons

PURPOSE: This rule interprets the sales tax law as it applies to the sale of crates and cartons, and interprets and applies sections 144.010 and 144.011, RSMo.

(1) Sales of crates and cartons are subject to tax unless purchased under conditions of sale for resale.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-7 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Floyd Charcoal Co. v. Director of Revenue**, 599 SW2d 173 (Mo. banc 1980). Appellant charcoal company purchased pallets upon which charcoal packages were loaded for sale to its customers and claimed an exemption from the payment of sales tax on its initial purchase of the pallets as being purchases for resale to its customers. The assessment of sales tax was upheld since the charcoal company maintained the practice of crediting the customer's next purchase for each pallet returned to it.*

12 CSR 10-3.210 Seller Must Charge Correct Rate

PURPOSE: This rule interprets the sales tax law as it applies to the responsibility of the seller for charging the correct rate of tax and interprets and applies sections 144.060, 144.080 and 144.100, RSMo.

(1) It is the responsibility of the seller to charge his/her customer only for that amount of tax for which the law authorizes him/her to seek reimbursement. Any overcharges will be treated as part of his/her gross receipts for purposes of determining his/her tax responsibility to the Department of Revenue.

(2) Amounts which a seller charges to and receives from a purchaser in accordance with the sales tax law are not includable in his/her gross receipts if the amounts are separately charged or stated.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.212 Rooms, Meals and Drinks

PURPOSE: This rule interprets the sales tax law as it applies to the sale of rooms, meals and drinks, and interprets and applies sections 144.010, 144.020 and 144.021, RSMo.

(1) Eating, drinking and sleeping establishments deriving receipts from rooms, meals and drinks served to the public are subject to the sales tax on all these receipts.

(2) Persons deriving receipts from room charges, whether rented or leased on a daily, weekly or monthly basis, are subject to the sales tax from these receipts unless a person renting or leasing is deemed to be a permanent resident. In all instances, receipts from permanent residents for food and drink are taxable to the seller, regardless of whether the charge is made daily, weekly or monthly.

(3) Persons engaged in providing rooms are also subject to the sales tax on all sales of tangible personal property and taxable services, including telephone calls. When purchasing tangible personal property which is not resold to guests, residents or employees, no resale exemption certificate should be furnished to suppliers of these items. Instead, the supplier is subject to the sales tax on these items.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 50 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 020-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.214 Complimentary Rooms, Meals and Drinks

PURPOSE: This rule interprets the sales tax law as it applies to complimentary rooms, meals and drinks, and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Persons such as hotels and motels providing complimentary rooms, meals and drinks or other items may not purchase those meals, beverages or other items under conditions of a sale for resale.

(2) Example: The Big Wheel Hotel provides a complimentary room and bottle for Herb Hubcap who is a very important person. The Big Wheel Hotel is subject to sales tax on the actual cost of the bottle.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.216 Permanent Resident Defined

PURPOSE: This rule interprets the sales tax law as it applies to a permanent resident and interprets and applies sections 144.010 and 144.020, RSMo.

(1) A person who contracts in advance for a room in a hotel or motel for a period of thirty (30) consecutive days or more and who actually remains a guest of the hotel or motel for thirty (30) consecutive days or more is considered a permanent resident and the rental or lease receipts from letting the room are not subject to the sales tax.

(2) A permanent resident is not considered synonymous with a permanent room. Persons who rent or lease accommodations on a permanent basis to industries such as airlines or railroads or other persons for their employee's use are subject to the sales tax on the receipts from all these accommodations.

(3) Example: The Summit Hotel rents yearly accommodations to the Fly-Away Airlines for pilots and stewards. The Summit Hotel is subject to the sales tax on all Fly-Away accommodation receipts.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***National Land Management, Inc., v. Director of Revenue**, Case No. RS-81-0639 (A.H.C. 6/6/84). The issue in this case was whether time sharing arrangements at resorts are subject to sales tax. The commission initially found that the receipts in question were not taxable pursuant to section 144.020.1(2), which provides for imposition of tax on—a) sums paid for admission to places of amusement, b) sums paid for seating accommodations therein and c) all fees paid to or in place of amusement.*

Regarding the first provision, the commission found that the sums in question were not paid for admission as that term is commonly understood. The commission also found that accommodations were not the subject for which the sums were paid. With respect to the third provision, the commission found that the assessments did not apply to any separate fees charged for the use of petitioner's amenities but were based on charges for the time share occupancies.

Next, the commission found that section 144.020.1(6) was inapplicable, because the payments in question did not constitute charges for rooms furnished in any hotel, motel, inn, tourist camp or tourist cabin. Arriving at this conclusion the commission held, "If the relationship is that of innkeeper and guest, then petitioner is providing a taxable service; if not, then petitioner's time share activities are not taxable under section 144.020.1."

Looking at the law from various states, the commission held that the agreements in question constituted vacation leases creating an assignable interest in real property. Because of the thirty-year lease, the occupants are not transitory in the sense that travelers or tourists are. Rooms in petitioner's resort are not regularly rented because they are only open to the general public when they are not already reserved pursuant to one of the previously mentioned agreements. Thus, the director of revenue failed to meet his burden of proof by establishing that the agreements in question constituted taxable service in the form of a room furnished at a hotel, motel, tourist camp or tourist cabin by an innkeeper.

12 CSR 10-3.218 Students

PURPOSE: This rule interprets the sales tax law as it applies to student accommodations and interprets and applies sections 144.010 and 144.030, RSMo.

(1) An educational institution which furnishes room and board to the students in pursuit of their educational objectives is not subject to sales tax on the gross receipts from these services.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule nos. 5 and 50 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 020-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.220 Sales of Accommodations to Exempt Organizations

PURPOSE: This rule interprets the sales tax law as it applies to sales of accommodations to exempt organizations and interprets and applies sections 144.030.2(19), (20) and (22) and 144.080, RSMo.

(1) When accommodations, food and drinks are sold to an organization who has an exemption letter from the Department of Revenue and all billings are directly to the organization and paid for with their funds, the sales are not subject to the sales tax. If the billing is in an individual's name, it is subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-6 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

12 CSR 10-3.222 Transportation Fares

PURPOSE: This rule interprets the sales tax law as it applies to transportation fares and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Receipts derived from the intrastate transportation of persons for hire by persons operating buses and trucks licensed by the Missouri Public Service Commission are subject to tax. Also taxed are the receipts from the intrastate transportation of persons for hire by persons operating a railroad, sleeping car, dining car, express car or boat.

Receipts derived from the intrastate transportation of persons for hire in air commerce, however, are not subject to sales tax.

(2) Taxi cabs, limousine services and local buses are not subject to tax.

(3) If a passenger is engaged in an interstate trip and purchases transportation between two (2) points in this state, the separate charges for this intrastate journey are subject to the sales tax. Lump sum charges of special charter means of conveyance are subject to the sales tax in the same manner as their individual fares.

(4) Purchases by persons on state or federal expense accounts where each respective government is directly responsible for the payment of the tickets are not subject to the sales tax only when paid for by a governmental draft.

(5) Persons selling meals, drinks, cigarettes, magazines, toiletries and other articles of tangible personal property to persons on intrastate or interstate trips are subject to the sales tax on the gross receipts from all sales in this state. Carriers operating facilities which sell tangible personal property or render taxable services, such as eating and sleeping facilities, are subject to the sales tax on the gross receipts from the sales in this state.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 58 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 020-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Dec. 30, 1983, effective April 12, 1984.*

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

***Aloha Airlines v. Director of Taxation of Hawaii**, 104 S.Ct. 291 (1983). 49 U.S.C. section 1513(a) preempts state statutes and expressly prohibits states from taxing directly or indirectly gross receipts derived from interstate air transportation.*

12 CSR 10-3.224 Effective Date of Option
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 020-8 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

***Op. Atty. Gen. No. 71, Buechner (4-8-77)**. A corporation involved in the rental and leasing of motor vehicles may elect either to pay sales tax at the time it receives the gross receipts from the rental or lease agreements or at the time of registration of motor vehicles. However, either election must include all motor vehicles held for rental or lease and a corporation with separately managed divisions may not elect to have one division pay Missouri sales tax at the time the vehicles are purchased and another division pay sales tax as rental proceeds are received from its customers.*

12 CSR 10-3.226 Lease or Rental

PURPOSE: This rule interprets the sales tax law as it applies to lease or rental receipts and interprets and applies sections 144.020 and 144.070, RSMo.

(1) The gross receipts from the sale of tangible personal property which are exempt from the sales or use tax on the sale of the property are similarly exempt from the sales tax on the total gross receipts from any lease or rental of the property. The gross receipts derived from a lease or rental of motor vehicles or trailers leased or rented by an authorized motor vehicle leasing company are subject to the sales tax. The gross receipts derived from a lease or rental of other tangible personal property upon which Missouri sales tax was not paid at the time of purchase are also subject to sales tax.

AUTHORITY: section 144.270, RSMo (1994). S.T. regulation 020-9 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 14, 1976, effective Dec. 11, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Op. Atty. Gen. No. 71, Buechner (4-8-77)**. A corporation involved in the rental and leasing of motor vehicles may elect either to pay sales tax at the time it receives the gross receipts from the rental or lease agreements or at the time of registration of motor vehicles. However, either election must include all motor vehicles held for rental or lease and a corporation with separately managed divisions may not elect to have one division pay Missouri sales tax at the time the vehicles are purchased and another division pay sales tax as rental proceeds are received from its customers.*

***Hal Aviation, Inc. v. Director of Revenue**, Case No. RS-79-0310 (A.H.C. 1/20/83). Taxpayer purchased airplanes pursuant to a resale exemption certificate thereby escaping the payment of sales tax on the purchase. Taxpayer then used some of the planes in the operation of a flight school prior to selling them. A sales tax assessment was issued against the taxpayer based upon the theory that the use of the planes by the taxpayer should be taxed pursuant to section 144.020.1(8), RSMo as a rental to the flying students. The court held that the use of these planes by the flying students was no more a rental than the use of classrooms by other types of students. The students paid valuable consideration for a service, the flying lessons, and not for the rental of the planes. Additionally, the court found that the department could not impose a tax on the theory that taxpayer evaded sales tax by the improper use of resale exemption certificates because this was not the basis of the audit and it went beyond the scope of the complaint and the answer. Note, that since the lease of the airplanes by students does not constitute a rental, sales or use tax would be owed to the state of Missouri on the original purchase of the plane.*

12 CSR 10-3.228 Lessors-Renters Include

PURPOSE: This rule indicates that a person may be a lessor or renter even though the location of the leased or rented article remains unchanged and interprets and applies sections 144.010 and 144.020, RSMo.

(1) Lessors and renters include those persons whose tangible personal property remains on their own premises, but which is operated by the lessee or is under the direct control of the lessee for a specified period of time.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-10 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 14, 1976, effective Dec. 11, 1976.*

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

12 CSR 10-3.230 Repair Parts for Leased or Rented Equipment

PURPOSE: This rule interprets the sales tax law as it applies to parts used in the repair of

leased or rented equipment and interprets and applies sections 144.010 and 144.020, RSMo.

(1) Sellers of repair or replacement parts for use in repairing tangible personal property which is rented or leased are subject to the sales tax unless the lessor/renter provides the seller with a properly executed exemption certificate. In order to purchase repair or replacement parts tax exempt under an exemption certificate, the following requirements must be met:

(A) Tax must not have been paid on the property to be repaired at the time of purchase. An exception is motor vehicles or trailers leased or rented by an authorized motor vehicle leasing company which also paid sales tax on the vehicles when they were purchased;

(B) The repair or replacement of the property must be performed at no additional cost to the lessee of the property under the lease agreement; and

(C) The lessor must not use the property or parts in any manner other than holding them for the repair of or for replacement on leased or rental property or for resale.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-11 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.232 Maintenance Charges for Leased or Rented Equipment

PURPOSE: This rule interprets the sales tax law as it applies to maintenance charges for leased or rented equipment and interprets and applies sections 144.010 and 144.020, RSMo.

(1) When maintenance or repair charges or other incidental charges are included in a lease or rental contract, all charges are considered gross receipts.

(A) Example: L Corporation leases copy machines to various customers. As part of the lease agreement, L Corporation agrees to perform all maintenance and repair upon the copy machines. All of the gross receipts are subject to sales tax and no deduction is allowed for the maintenance agreement (also see 12 CSR 10-3.064).

(B) Example: J Corporation leases and ships equipment to persons in various areas of Missouri, separately stating the lease charge and the transportation charges. J Corporation is subject to sales tax on the lease price of the goods, including the transportation charges, as they were incurred prior to transfer of possession to the customer.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-12 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

12 CSR 10-3.233 Export Sales

PURPOSE: This rule interprets the sales tax law as it applies to export sales and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Sales made to customers located outside Missouri are not subject to the Missouri sales tax if title to the property passes at the customers' locations.

(A) Example: Mrs. Jones, a resident of Kansas, purchases by telephone a necklace from a Missouri seller and requests that the seller ship the necklace to her out-of-state residence. The transaction is not subject to Missouri sales tax as this transaction is deemed an export sale.

(2) When an out-of-state resident takes delivery at a Missouri location, the sale would be deemed to be consummated at the place of business of the seller and would be subject to Missouri sales tax unless a valid exemption certificate is issued to the seller at the time of purchase.

(A) Example: Mrs. Brown purchases a necklace at a Missouri seller location and has the seller ship the necklace to her sister located outside Missouri. The transaction is subject to Missouri sales tax.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

***Kaiser Aluminum & Chemical Sales v. Director of Revenue**, Case No. RS-82-0303 (A.H.C. 10/28/83). The issue in this case was whether or not certain bricks shipped from a Missouri plant were subject to Missouri sales tax. It was necessary for the commission to determine where the sale took place. When no specific provision for the passage of title is contained in the agreement between the parties, the commission must look to other evidence such as industry practice, passage of risk of loss, party paying transportation costs and method and time of payment. The commission cited **Kurtz Concrete, Inc. v. Spradling**, 560 SW2d 858 (Mo. banc 1978) and **Frontier Bag, Inc. v. Director of Revenue**, Case No. R-80-0073 (A.H.C. 11/12/81). Finding that the goods were shipped F.O.B. from Mexico, Missouri, the commission held that petitioner manifested an intent to have title pass to the buyer at the time and place of shipment. The commissioner looked to section 400.2-401(2)(a), RSMo (1978) (Uniform Commercial Code) in reaching this conclusion. Therefore, the sale did take place in Missouri and tax was applicable.*

12 CSR 10-3.234 Permit Required
(Rescinded December 11, 1980)

AUTHORITY section 144.270, RSMo 1978. S.T. regulation 020-13 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug 13, 1980, effective Dec. 11, 1980.

***Op. Atty. Gen. No. 71, Buechner (4-8-77)**. A corporation involved in the rental and leasing of motor vehicles may elect either to pay sales tax at the time it receives the gross receipts from the rental or lease agreements or at the time of registration of motor vehicles. However, either election must include all motor vehicles held for rental or lease and a corporation with separately managed divisions may not elect to have one division pay Missouri sales tax at the time the vehicles are purchased and another division pay sales tax as rental proceeds are received from its customers.*

12 CSR 10-3.236 Domicile of Motor Vehicles
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 020-14 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.238 Leasing Motor Vehicles for Release
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 020-15 was last filed Dec. 31,

1975,effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 1, 1980.

12 CSR 10-3.240 Meal Tickets

PURPOSE: This rule interprets the sales tax law as it applies to the sale of meal tickets and interprets and applies section 144.010, RSMo.

(1) On the purchase of meal tickets, sales tax should be collected by the vendor at the time of sale. When redeemed for meals, no further sales tax should be imposed.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-16 was last filed as rule no. 11 Jan. 22, 1973, effective Feb. 1, 1973. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.242 Gross Sales Reporting Method
(Rescinded March 14, 1991)

AUTHORITY: section 144.270, RSMo 1986. S.T. regulation 021-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Oct. 24, 1990, effective March 4, 1991.

12 CSR 10-3.244 Trade-Ins

PURPOSE: This rule interprets the sales tax law as it applies to trade-in property on which tax previously has been paid and interprets and applies section 144.025, RSMo.

(1) Where any article is taken in trade as a credit or part payment on the purchase price of the article being sold at retail, the tax is computed only upon the portion, if any, of the purchase price in excess of the trade-in allowance, provided there is a bill-of-sale or other document showing the actual allowance made for the article traded in.

(2) A person who sells a motor vehicle, trailer, boat or outboard motor and purchases a replacement motor vehicle, trailer, boat or outboard motor or finalizes a contract to purchase a new replacement motor vehicle, trailer, boat or outboard motor within ninety (90) days before or after that sale is taxed only upon that portion, if any, of the purchase price of the replacement unit in excess of the sales price of the original unit, provided a notarized bill of sale and a copy of the purchase contract agreement, if applicable, showing the purchase price is presented to the Department of Revenue at the time of titling.

(3) In order to qualify for a replacement tax credit, a motor vehicle, trailer, boat or outboard motor must be replaced by a motor vehicle, trailer, boat or outboard motor, respectively. In addition, the replacement unit and the unit being replaced must be titled in the same owner's name(s).

(4) In order to determine if a motor vehicle, trailer, boat or outboard motor owner qualifies for a ninety (90)-day replacement tax credit based on the date of the purchase contract, the following conditions must be met:

(A) The date of the purchase contract and the sale of the replaced unit must be on or after May 31, 1994. May 31 is the earliest date which can be used in order for the ninety (90)-day time period to include the August 28, 1994, effective date of the new legislation;

(B) The date of the purchase contract and the sale of the replaced unit must be within ninety (90) days of each other; and

(C) A copy of the purchase contract for the new motor vehicle, trailer, boat or outboard motor and a copy of the notarized bill of sale for the unit being replaced must be submitted with the application for title or the request for refund if taxes have already been paid. The following is an example: On May 31, 1994, a vehicle owner sells a passenger motor vehicle. On August 1, 1994, the seller signs a purchase contract for a new passenger motor vehicle. Since both the sale and the contract to purchase occurred on or after May 31 and are within ninety (90) days of each other, the replacement credit will be allowed. The same would be true if the purchase contract was signed on May 31,1994, and the replaced vehicle sold on August 1, 1994.

(5) A person who purchases a replacement motor vehicle, trailer, boat or outboard motor as a result of a total loss due to theft or casualty will be taxed only that portion, if any, of the purchase price of the replacement unit in excess of the insurance proceeds received for the theft or casualty loss plus any owner's deductible obligation, provided a certification by the insurance company showing the amount of the insurance proceeds and deductible is presented to the Department of Revenue at the time of titling and the replacement motor vehicle, trailer, boat or outboard motor is purchased within ninety (90) days of the date of payment by the insurance company. This sales tax credit applies regardless of whether the unit was titled and insured in the same name.

AUTHORITY: sections 144.025 and 144.270, RSMo 1994. This rule was previously filed as rule no. 36 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 025-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Feb. 3, 1984, effective May 11, 1984. Amended: Filed Nov. 28, 1994, effective May 28, 1995.*

**Original authority: 144.025, RSMo (1963), amended 1977, 1979, 1985, 1986, 1994 and 144.270, RMSo (1939), amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.245 Exempt Federal, State Agency or Missouri Political Subdivision—General Requirements

PURPOSE: This rule sets forth general requirements which apply to a federal, state agency or Missouri political subdivision claiming exempt status and interprets and applies section 144.030, RSMo.

(1) Each agency must make written application on a form prescribed by the director of revenue for a letter of exemption to be issued.

(2) An exemption letter granted to a federal, state agency or Missouri political subdivision will be effective for five (5) years from the date of issuance of the letter.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 15, 1984, effective Feb. 11, 1985.*

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

***The Public School Retirement System of the City of St. Louis v. Director of Revenue**, Case No. RS-80-0125 (A.H.C. 2/8/84). The issue in this case was whether The Public School Retirement System of the City of St. Louis is exempt from sales tax as a public elementary or secondary school, a not-for-profit civic or charitable organization or a constitutionally tax-exempt political subdivision. The commission first noted that an agreement existed between the taxpayer and the Internal Revenue Service, whereby the Retirement System did not constitute a tax-exempt 501(c)(11) Teachers Retirement Fund, because it had more than an incidental number of nonteacher participants and a large amount of funding from gifts, devises, bequests and legacies, which was inconsistent*

*with the provisions of Section 501(c)(11) of the **Internal Revenue Code**. The commission found that the taxpayer was not exempt under section 144.030.2(19), RSMo as a public elementary or secondary school, because it was specifically created by the general assembly as a body corporate, separate and distinct from the public schools of the City of St. Louis. The commission found that the taxpayer was not exempt under section 144.030.2(20), RSMo as a civic or charitable organization because, like the hospital at issue in **Frisco Employees' Hospital Assn. v. State Tax Comm.**, 381 SW2d 772 (Mo. banc 1964), it only provided benefits to its members. Finally, the commission found that collecting sales tax on purchases made by the Retirement System did not constitute the imposition of tax on property paid for out of the funds of a county or other political subdivision in violation of Mo. Const. Art. III, section 39(10) because the taxpayer was not a county or political subdivision. The commission rejected the taxpayer's argument that the funds which it received from the political subdivisions retained their character when they were used by the Retirement System to make purchases. Pointing out that the Retirement System is separate and independent from the St. Louis School District and that it receives funds from many sources other than the School District, the commission found that the funds in question had lost their character and ceased to be funds of a political subdivision.*

12 CSR 10-3.246 General Examples
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule No. 36 Jan. 22, 1993, effective Feb. 1, 1973. S.T. regulation 025-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.247 Information Required to be Filed by a Federal, State Agency or Missouri Political Subdivision Claiming Exemption

PURPOSE: This rule sets forth the requirements which must be met by a federal, state agency or Missouri political subdivision making application for exemption and interprets sections 144.030 and 144.080, RSMo.

(1) A federal, state agency or Missouri political subdivision claiming exempt status pursuant to section 144.030.1, RSMo is required to file the following with the Department of Revenue:

(A) Application for Sales/Use Tax Exemption, Form DOR-1746 and Missouri Sales/Use Tax Exemption Application Affidavit, Form DOR-1922; and

(B) Any other documents, statements and information requested by the director of revenue.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 15, 1984, effective Feb. 11, 1985.*

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

***The Public School Retirement System of the City of St. Louis v. Director of Revenue**, Case No. RS-80-0125 (A.H.C. 2/8/84). The issue in this case was whether The Public School Retirement System of the City of St. Louis is exempt from sales tax as a public elementary or secondary school, a not-for-profit civic or charitable organization or a constitutionally tax-exempt political subdivision. The commission first noted that an agreement existed between the taxpayer and the **Internal Revenue Service**, whereby the Retirement System did not constitute a tax-exempt 501(c)(11) Teachers Retirement Fund, because it had more than an incidental number of nonteacher participants and a large amount of funding from gifts, devises, bequests and legacies, which was inconsistent with the provisions of section 501(c)(11) of the Internal Revenue Code. The commission found that the taxpayer was not exempt under section 144.030.2(19), RSMo as a public elementary or secondary school, because it was specifically created by the general assembly as a body corporate, separate and distinct from the public schools of the City of St. Louis. The commission found that the taxpayer was not exempt under section 144.030.2(20), RSMo as a civic or charitable organization because, like the hospital at issue in **Frisco Employees' Hospital Assn. v. State Tax Comm.**, 381 SW2d 772 (Mo. banc 1964), it only provided benefits to its members. Finally, the commission found that collecting sales tax on purchases made by the Retirement System did not constitute the imposition of tax on property paid for out of the funds of a county or other political subdivision in violation of Mo. Const. Art. III, section 39(10) because the taxpayer was not a county or political subdivision. The commission rejected the taxpayer's argument that the funds which it received from the political subdivisions retained their character when they were used by the Retirement System to make purchases. Pointing out that the Retirement System is separate and independent from the St. Louis School District and that it receives funds from many sources other than the School District, the commission found that the funds in question had lost their character and ceased to be funds of a political subdivision.*

12 CSR 10-3.248 Sales to the United States Government

PURPOSE: This rule interprets the sales tax law as it applies to sales to the United States government by citing a court case and interprets and applies sections 144.010 and 144.030, RSMo.

(1) All sales made to the United States government and its agencies are not taxable when purchased directly and paid for by warrants drawn on the United States Treasury. The term agencies includes, but is not limited to: United States post offices, United States hospitals, military post or base exchanges, Federal Bureau of Investigation and other agencies whose activities are directly under federal control and paid for from the federal treasury. Federal savings and loan associations and national banks are subject to the sales tax and are not included in the definition of federal agencies (see *State ex rel. Thompson-Stearns-Roger v. Schaffner*, 489 SW2d 207 (1973)).

(2) Sales of tangible personal property, which are exempt from sales tax when purchased with federal government field purchase order (SF-44), are also exempt from sales tax when purchased with a United States government credit card under the following conditions:

(A) Purchases are limited to tangible personal property;

(B) Purchase of transportation, meals, entertainment or lodging with the United States government credit card will not be exempt from sales tax; and

(C) Total purchase at any one (1) time may not exceed one thousand dollars ($1000).

(3) All purchases for personal use or consumption are subject to sales tax.

(4) Each credit card purchase invoice/receipt, completed at the time of sale, must contain the following information which has been transferred by imprint from the credit card and credit card machine to the purchase invoice/receipt:

(A) Name of the individual to whom the card has been issued;

(B) An indication that the credit card is a United States government credit card and is for tax exempt purchase;
(C) Total amount of the purchase;
(D) Date of the purchase;
(E) Individual card number of the card holder; and
(F) Expiration date of the card.

(5) The purchase invoice/receipt must also contain the following information:
(A) Specific item(s) purchased;
(B) Cost of each item;
(C) Total cost of the item(s) purchased; and
(D) Signature of the authorized card holder.

(6) The seller must retain a properly executed receipt for each tax exempt transaction for a period of three (3) years from the date of the return on which the tax exempt sales are reported.

(7) Properly completed receipts for each tax exempt transaction must be retained by the taxpayer so they may be readily reconciled with the tax exempt sales for each reporting period.

(8) The department will disallow claims for tax exempt United States government credit card sales which are not supported by properly executed credit card receipts.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 2 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed Feb. 23, 1989, effective June 11, 1989.*

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

***State ex rel. Thompson-Stearns-Roger v. Schaffner**, 489 SW2d 207 (1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission. Purchases by a contractor of materials and supplies in performance of cost-plus contracts with the United States government are subject to sales tax, although the contract provides that title to the property purchased shall vest in the United States upon its delivery to the building site.*

***United States v. New Mexico**, 455 U.S. 720, 102 S.Ct. 1373 (1982). New Mexico's sales tax was not invalid as applied to purchases made by contractors having contracts with the federal government for construction and repair work on government-owned property, even where title passed directly from vendors to the federal government.*

12 CSR 10-3.249 Sales to Foreign Diplomats

PURPOSE: This rule interprets the sales tax law as it pertains to sales tax exemptions to foreign diplomats and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Foreign diplomats qualifying for a sales tax exemption under the provision of a treaty or agreement existing between the United States or Missouri and their respective country will be required to file an Application for Diplomatic Exemption, Missouri Sales Tax. A copy of the treaty or agreement must accompany the application.

(2) Those persons qualifying for the sales tax exemption will be issued a Foreign Government Exemption Card. The card should be displayed to the seller or vendor when purchases are made and all sales tickets must be signed. When the foreign diplomat's term expires, the exemption card must be returned to the Department of Revenue.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

12 CSR 10-3.250 Sales to Missouri

PURPOSE: This rule interprets the sales tax law as it applies to sales to Missouri and interprets and applies sections 144.010 and 144.020, RSMo.

(1) All sales made to Missouri are not taxable when purchased directly and paid for by warrants drawn on Missouri and an exemption letter is issued to the seller.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 1 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

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

***City of Springfield v. Director of Revenue**, 659 SW2d 782 (Mo. banc 1983). The issue in this case was whether or not the director of revenue could legally assess sales tax on concession, admission and use fees charged by the city park board. The Supreme Court found first that Mo. Const. Art. III, section 39(10), which prohibits a tax upon the "use, purchase or acquisition of property paid for out of the funds" of the city did not prohibit the imposition of tax upon the fees in question. There was no tax on the use, purchase or acquisition of property paid for from city funds. Secondly, the court found that section 144.020.1(2), RSMo brought the sale of recreational activities and concessions within the purview of the sales tax statute. The operation of the park and its facilities and services did constitute a business by a person making sales at retail and the park board did constitute a seller within the various definitions contained in section 144.010, RSMo.*

12 CSR 10-3.252 Hunting and Fishing Licenses

PURPOSE: This rule interprets the sales tax law as it applies to hunting and fishing licenses.

(1) Sales of Missouri hunting and fishing licenses are not subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-2A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

12 CSR 10-3.254 Sales to Missouri Political Subdivisions

PURPOSE: This rule interprets the sales tax law as it applies to sales to Missouri political subdivisions and interprets and applies sections 144.010 and 144.020, RSMo; Mo.

Const. Art. III, subsection 39(10) and Art. X, subsection 15.

(1) Sales of tangible personal property made to a political subdivision, if paid for out of funds of those subdivisions, are not taxable. Political subdivisions include, but are not limited to, counties, townships, cities, school districts, road districts, library districts, water districts, nursing home districts and other subdivisions empowered to levy a tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 3 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

***City of Springfield v. Director of Revenue**, 659 SW2d 782 (Mo. banc 1983). The issue in this case was whether or not the director of revenue could legally assess sales tax on concession, admission and use fees charged by the city park board. The Supreme Court found first that Mo. Const. Art. III, section 39(10), which prohibits a tax upon the "use, purchase or acquisition of property paid for out of the funds" of the city did not prohibit the imposition of tax upon the fees in question. There was no tax on the use, purchase or acquisition of property paid for from city funds. Secondly, the court found that section 144.020.1(2), RSMo brought the sale of recreational activities and concessions within the purview of the sales tax statute. The operation of the park and its facilities and services did constitute a business by a person making sales at retail and the park board did constitute a seller within the various definitions contained in section 144.010, RSMo.*

12 CSR 10-3.256 Sales Other Than Missouri or its Political Subdivisions

PURPOSE: This rule interprets the sales tax law as it applies to sales made to governments other than Missouri or its political subdivisions and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Sales made to states other than Missouri or to political subdivisions not located in Missouri are not exempt.

(2) Sales made to foreign governments, their residents, officials or employees are not exempt unless specifically provided in a law or treaty of the United States of America.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.258 Petty Cash Funds

PURPOSE: This rule interprets the sales tax law as it applies to sales paid for out of petty cash funds and interprets and applies sections 144.010 and 144.080, RSMo.

(1) Sales paid for with cash will be presumed to be taxable sales unless supported by an invoice or billing to the United States government, Missouri or any of its political subdivisions and a signed claim of exemption showing the title and position of the signatory and the identity of the governmental unit making the purchase.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-5 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.260 Nonappropriated Activities of Military Services

PURPOSE: This rule interprets the sales tax law as it applies to nonappropriated activities of military services and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Receipts from selling tangible personal property to nonappropriated fund activities of military services are not subject to the sales tax where there nonappropriated fund activities are declared to be instrumentalities of the United States by military regulations promulgated and signed by the secretary of the Army, Navy or Air Force.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-6 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

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

***State ex rel. Thompson-Stearns-Roger v. Schaffner**, 489 SW2d 207 (1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.*

***United States v. New Mexico**, 455 U.S. 720, 102 S.Ct. 1373 (1982). New Mexico's sales tax was not invalid as applied to purchases made by contractors having contracts with the federal government for construction and repair work on government-owned property, even where title passed directly from vendors to the federal government.*

12 CSR 10-3.262 Government Suppliers and Contractors

PURPOSE: This rule interprets the sales tax law as it applies to the taxation of tangible personal property involving transactions of and to government suppliers and contractors, and interprets and applies section 144.030, RSMo.

(1) Tangible personal property which is used exclusively in the manufacturing, processing, modification or assembling of products sold to United States government or any of its agencies is tax exempt.

(2) Persons selling tangible personal property to contractors contracting with the United States government or its agencies, Missouri or Missouri political subdivisions, are subject to the sales tax on all sales, regardless of, to whom the contract or purchase order designates title is to pass (*see State ex rel. Thompson-Stearns-Roger v. Schaffner*, 489 SW2d 207 (1973)).

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 1 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

***State ex rel. Thompson-Stearns-Roger v. Schaffner**, 489 SW2d 207 (1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.*

***United States v. New Mexico**, 455 U.S. 720, 102 S.Ct. 1373 (1982). New Mexico's sales tax was not invalid as applied to purchases made by contractors having contracts with the federal government for construction and repair work on government-owned property, even where title passed directly from vendors to the federal government.*

***Overland Steel, Inc. v. Director of Revenue**, 647 SW2d 535 (Mo. banc 1983). There were two issues in this case. The first was whether a taxpayer could claim a sales tax exemption for certain steel if sold, on the grounds that the purchasers were to use it in pollution control or plant expansion projects. The second was whether or not the transfer of steel to certain customers in Kansas was a sale subject to sales tax under the Commerce Clause of the **United States Constitution**. With respect to the first issue, the court found that the taxpayer had the burden of establishing that it was exempt from sales tax, and its failure to produce sales tax exemption certificates, coupled with the dearth of testimony concerning the exempt activities of taxpayer, fails to meet that burden. With respect to the second issue, the court found that when property is purchased subject to a resale certificate, the purchaser becomes liable for sales tax if the property is not resold. In this case the court found that because the taxpayer used the steel in question in its capacity as a contractor there was no resale. Therefore, the taxable event was the taxpayer's original purchase of the steel in Missouri. It was wholly irrelevant that the construction contract pursuant to which the steel was used was performed in Kansas. There was no violation of the Commerce Clause, and therefore, taxpayer was liable for tax.*

***Planned Systems Interiors, Ltd. v. Director of Revenue**, Case No. RS-85-0065, (A.H.C. 7/1/86). The petitioner's theory was that it was making a sale to an agency of the United States government and could not be required to pay sales tax.*

The Administrative Hearing Commission rejected petitioner's contentions and found that the taxpayer had a contractual relationship only as a subcontractor with K & S, the primary contractor and that the taxpayer sold the work stations to K & S pursuant to their contract. Under the department's regulations 12 CSR 10-3.028 and 12 CSR 10-3.262, this sale was subject to sales tax.

12 CSR 10-3.264 Repossessed Tangible Personal Property

PURPOSE: This rule interprets the sales tax law as it applies to sales of repossessed tangible personal property and interprets and applies section 144.010, RSMo.

(1) When banks, credit unions, savings and loan associations and other similar institutions acquire tangible personal property through repossession or foreclosure and where these properties are later sold by the creditors, the sales are subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 38 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-8 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.266 Sales to National Banks and Other Financial Institutions

PURPOSE: This rule interprets the sales tax law as it applies to sales to national banks and other financial institutions and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Persons selling tangible personal property or taxable service to national banks, other banks, credit unions or credit institutions and savings and loan associations, whether state or otherwise, are subject to the sales tax. Persons selling to federal reserve banks, federal land banks and federal credit unions are not subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 12 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-9 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

***In Farm and Home Savings Association v. Spradling**, 538 SW2d 313 (1976) the court held sales tax is a tax upon gross receipts of the seller, not the purchaser. Consequently, exemption provisions of the "tax in lieu of other taxes" statute did not exempt the association from payment of sales tax because it was the purchaser, not the seller. Had the legislature intended to exempt savings and loan associations as purchasers from use tax, it would have declared the intent in the act itself or specifically so provided in the exemption statute applicable to savings and loan associations.*

12 CSR 10-3.268 General Rule

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-10 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.270 Carbon Dioxide Gas

PURPOSE: This rule interprets the sales tax law as it applies to sellers of carbon dioxide gas and interprets and applies sections 144.010 and 144.030.2(2), RSMo.

(1) Persons selling carbon dioxide gas to be used in producing carbonated water would not be subject to the sales tax since the gas becomes an ingredient or component part of the end product.

(2) Persons selling carbon dioxide gas to be used as a lifting agent for soft drinks or beer are subject to the sales tax since the gas does not become an ingredient or component part of the soft drink or beer.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-11 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.272 Motor Fuel and Other Fuels

PURPOSE: This rule interprets the sales tax law as it applies to sellers of motor fuels and other fuels, and interprets and applies sections 144.010, 144.030.2(1) and (22), RSMo.

(1) Persons selling motor fuel or special fuel in Missouri which is subject to a motor fuel or special fuel tax are not subject to the sales tax on the receipts from these sales. If the special fuel has no special fuel tax imposed or if the special fuel tax is refunded, it is subject to sales tax, unless otherwise exempted. Other fuels are subject to the sales tax when sold without regard to quantity or price unless specifically exempted under the sales tax law.

(2) Fuel is not subject to the sales tax when sold for the purpose of pumping or propelling water ultimately sold at retail. Likewise, the sale of fuel to be consumed in manufacturing or in creating gas, power, steam or electrical current to be ultimately sold at retail is not subject to the sales tax. Fuel is subject to the sales tax when sold for consumption by bakeries for baking their products or heating their establishments, by foundries and steel mills for the purpose of melting ores and by railroads within Missouri.

(3) When fuel is purchased for both exempt and taxable purposes, the purchaser must state at the time of purchase what portion of the fuel will be used for exempt purposes as opposed to the portion that is taxable.

(4) Example: The Big D Company sells fuel oil to the Sky High Utility Company for use in creating electricity and pumping water and natural gas to its customers. The Big D Company is not subject to the sales tax on fuel oil sold for this purpose. The sale of fuel oil to the utility company for use in heating its buildings is subject to the sales tax. The Big D Company must obtain a segregation of use statement at the time of sale.

(5) The amount of propane or natural gas, electricity or diesel fuel which is used exclusively for drying agricultural crops is entitled to sales tax exemption. If all of the electricity purchased through a single meter is used for drying agricultural crops, the purchaser should provide a written exemption certificate to the electric company so that all electricity is purchased tax free. If the electricity purchased through a single meter is used for multiple purposes such as domestic use and farm business use and the purchaser has been categorized as a domestic use customer by the electric company, the electric company should not charge sales tax on any of the electricity. At the end of the year when the purchaser is preparing his/her state and federal income tax returns (including Schedule F), s/he will take an income tax deduction for the amount of electricity used in his/her farming business. The purchaser will also be required to show to the Missouri Department of Revenue how much of the farm business electricity was used exclusively for drying crops and how much was used in other facets of his/her farm business. If the purchaser is categorized as a nondomestic use customer by the electric company, s/he will be required to pay sales taxes on the entire amount of electricity purchased. At the end of the year when the purchaser is preparing his/her state and federal income tax returns (including Schedule F), s/he will file an application for refund of sales tax for the electricity used for domestic purposes as well as the amount used exclusively for drying agricultural crops. If the total amount of propane gas in a single tank is used for drying agricultural crops, the purchaser should provide a written exemption certificate to the propane seller so that all propane gas is purchased tax free. If the purchases of propane gas in a single tank are used for multiple purposes such as domestic use and farm business use and primary use is a nondomestic use, the customer should notify the propane gas seller to categorize him/her as a nondomestic use customer and s/he will be required to pay sales tax on the entire amount of propane gas purchased. The customer will compute underpayments and overpayments of tax at the end of the year in the same manner as provided previously for electricity and make appropriate payments and refund request in the same manner. Purchasers of diesel fuel to be used exclusively for drying agricultural crops are guided by the same principles set out previously for electricity and propane gas. Purchasers of diesel fuel, propane or natural gas to be used exclusively for drying crops must maintain a separate tank for those purposes unless the only other purpose for which the fuel is used is a nonbusiness domestic use. Diesel fuel which is to be used for drying agricultural crops as well as other farm business purposes may not be purchased under claim of exemption unless the fuel for drying is segregated at the time of purchase into a separate tank used exclusively for that purpose.

(6) One-half (1/2) of each purchase of diesel fuel which is used to operate tax exempt farm tractors and tax exempt farm machinery is itself tax exempt. In order to properly claim tax exemptions for this purpose, the purchasers should maintain separate fuel tanks which are used ONLY to power the exempt items. A written claim of exemption must be on file with the seller for each purchase of fuel. When selling diesel fuel to be used for tax exempt machinery, the seller should divide the total purchase price by two (2) and compute tax only on one-half (1/2) of the purchase price. Under no circumstances should a purchaser use tax exempt diesel fuel for any purpose except the operation of tax exempt farm machinery. A purchaser should maintain adequate records to substantiate the use made of all diesel fuel purchased under a claim of exemption.

(7) All sales of metered water service; electricity; electrical current; natural, artificial or propane gas; wood; coal or home-heating oil for domestic use are exempt from tax. Also exempted is unmetered water service to residents of the City of St. Louis for domestic use. Domestic use means that portion which the individual purchaser does not use for a business, commercial or industrial purpose. Each seller of metered water service; electricity; electrical current; natural, artificial or propane gas service; and unmetered water service in the City of St. Louis shall establish and maintain a system, based upon the apparent or declared predominant use purpose of the purchaser, where individual purchases are classified as domestic use or nondomestic use based upon principal use. No seller shall charge sales tax on purchases classified as domestic use. Sellers shall charge sales tax upon the entire amount of purchases classified as nondomestic use. Each person making domestic use purchases of services or property and who uses any portion of the services or property so purchased for a nondomestic use, by the fifteenth day of the fourth month following the year of purchase, and without assessment, notice or demand, shall file a return and pay sales tax on that portion of nondomestic purchases. Each person making nondomestic purchases of services or property and who uses any portion of the services or property so purchased for domestic use, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, may apply for credit or make refund to the director of revenue and the director shall give credit or make refund for taxes paid on the domestic use portion of the purchase.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 46 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-12 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March*

30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Dec. 3, 1985, effective Feb. 24, 1986.

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

***In Hern v. Carpenter**, 312 SW2d 823 (1958), where subsection 144.030.2, RSMo exempts plaintiffs, who are farmers (purchasers) and a corporate distributor (seller) of motor fuel, from payment of sales tax on sales and purchases of such fuel, the court held all sales of gasoline are exempt from liability for sales tax, including those sales where purchaser declares his intention not to use gasoline for highway purposes and in fact obtains a refund of motor fuel tax paid.*

***Missouri Public Service Company v. Director of Revenue**, 733 SW2d 448 (Mo. banc 1987). Since there is no statutory definition of fuel, the Supreme Court attributed to the work its plain and ordinary meaning. The court found Rolfite exempt from use tax because it is a fuel material which produces heat by burning and is consumed in the manufacture of electricity. The court stated that the fact Rolfite is used primarily for other purposes does not change its essential functional character as a fuel.*

***Lady Baltimore of Missouri, Inc. v. Director of Revenue**, Case Nos. RS-83-2819 and RS-83-2820 (A.H.C. 9/9/87). The petitioner argued that it is exempt under 144.030.2(1), RSMo because diesel fuel is subject to the special fuel tax. The Administrative Hearing Commission held that where the special fuel tax is not paid upon purchase, the fuel is not subject to an excise or sales tax under another law of the state and the sales tax exemption does not apply. Therefore sales tax is due and payable.*

The taxpayer in the alternative argued that the respondent was required to collect the tax from the vendor rather than the petitioner as a purchaser. The Administrative Hearing Commission found that under the facts of this case that the petitioner had purchased the special fuel under an improper claim of exemption and was therefore liable for sales tax.

12 CSR 10-3.274 Farm Machinery and Equipment.

PURPOSE: This rule interprets the sales tax law as it applies to farm machinery and equipment, and interprets and applies sections 144.010 and 144.030.2(22), RSMo.

(1) Farm machinery and equipment are exempt from tax if used exclusively and directly for the production of crops as a business or for the raising and feeding of livestock, fish or poultry or of producing milk for ultimate sale at retail.

(2) Farm machinery is defined as machines or components thereof contributing to the agricultural production process. Farm machinery includes, but is not limited to, the following: tractors, combines, balers, irrigation equipment, livestock and poultry feeders.

(3) Farm equipment is defined as any independent device or apparatus separate from any machinery, but essential to production agriculture. Such equipment includes, but is not limited to augers, grain dryers (heaters and fans), automated livestock feeder bunks (but not ordinary building materials), automatic stock waterers, water pumps serving production areas, heating or lighting equipment specifically required by the production process, (that is, ultraviolet lights) and special heaters for incubation. General heating, lighting and ventilation equipment for nonproduction areas does not qualify as farm equipment. In addition, equipment designed for and essential to production agriculture attached to real property shall be considered farm equipment. Such equipment includes, but is not limited to, special livestock flooring. A tractor or other machinery that qualifies for the exemption may include options or accessories that are not farm equipment. However, these items are exempt only if installed and sold as an integral part of the qualifying machine and in a single transaction. Equipment used in farm management such as communications and office equipment, repair, service, security or fire protection equipment, is not farm equipment.

(4) The following categories of items are excluded from the meaning of the terms farm machinery and farm equipment and are subject to tax:

(A) Containers and storage devices such as oil and gas storage tanks, pails, buckets and cans;

(B) Hand tools and hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks, shovels, brooms, wrenches, pliers and grease guns;

(C) Attachments and accessories not essential to the operation of the machinery itself (except when sold as a part of the assembled unit) such as cigarette lighters, radios, canopies, air conditioning units, cabs, deluxe seats, tool or utility boxes and lubricators; and

(D) Drainage tile, fencing materials, building materials and grain bins for storage of grain for resale.

(5) Under no circumstances can a motor vehicle or trailer ever be treated as tax exempt farm machinery. For the purpose of these guidelines, the term motor vehicle and trailer have the same meaning as those terms are defined under the titling and licensing laws of Missouri (Chapter 301, RSMo).

(6) Farm machinery includes aircraft used solely for aerial application of agricultural chemicals.

(7) Machinery or equipment that would otherwise qualify as exempt farm machinery and equipment will not lose its exempt status merely because the machinery or equipment is modified or specially made to be attached to a motor vehicle. When farm machinery or equipment, which has been previously purchased under a valid claim of exemption and subsequently attached to a motor vehicle, is sold together with the motor vehicle to which it was attached, the part of the total sales price attributable to the farm machinery or equipment is exempt from sales tax, if the farm machinery or equipment is separately invoiced.

(8) Under no circumstances can an item be treated as tax exempt farm machinery unless it is used on land owned or leased by the purchaser for the purpose of producing farm products. This condition will be met where the machinery is used on a bona fide farm. Schedule F of the Federal Income Tax Return may be required to verify farm operation.

(A) Example: A construction company which purchases a farm tractor to be used on construction sites is not entitled to a sales tax exemption. A hotel or resort which purchases a farm tractor for grass cutting, snow plowing or other general chores on the premises is not entitled to a sales tax exemption.

(9) Under no circumstances may an item be treated as tax exempt farm machinery unless it is either used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or used directly in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail.

(A) In determining whether items are used directly, consideration must be given to the following factors:

1. Where the items in question are used;

2. When the items in question are used; and

3. How the items in question are used to produce a farm product.

(B) The fact that particular items may be considered to be essential or necessary will not automatically entitle it to exemption. For example, equipment used for the storage of grain or other items for future sale after the production process is complete will not be exempt from taxation since those storage items are not used directly in the production of farm products. Equipment used for the storage of grain to be fed to livestock would, however, be considered items used directly in the production process. The term "used directly" encompasses items which are used in some manner prior to the actual commencement of production, during production, or in some manner after the production has terminated, but before storage of the processed item occurs.

(10) Repair and replacement parts purchased for use on farm machinery are exempt from tax. Included in the repair and replacement part category are batteries, tires, fan belts, mufflers, spark plugs, oil filters, plow points, standard-type motors and cutting parts. In order for an item to qualify as a tax exempt repair or replacement part for farm machinery or equipment, the item must be used exclusively on tax exempt farm production machinery. Consumable supplies such as grease, oil and antifreeze are not considered repair and replacement parts and are taxable items.

(11) Machinery and equipment are not exempt unless used exclusively for agricultural purposes. Machinery and equipment used for a dual purpose, one purpose being agricultural and the other being nonagricultural, are not exempt. An example of nonexempt dual use would be a farm tractor used for farm production and also used to perform roadwork and repairs on the farm or elsewhere.

(12) The Department of Revenue will presume that all retail sales of property are taxable unless the seller keeps on file a written claim of exemption signed by the purchaser. The official Farmer's Exemption Certificate published by the Department of Revenue should be used for that purpose. A claim of exemption must be accepted in good faith by the retailer/seller. A claim of exemption on the purchase/sale of an item listed in this regulation as "Usually Taxable" will be presumed not to have been taken in good faith.

(13) Schedule A is a list of items of farm machinery and equipment which will usually be exempt if used exclusively for agricultural purposes, on land owned or leased for the purpose of using farm products and used directly in producing farm products or livestock to be sold ultimately at retail. Schedule A follows the body of this rule.

(14) Schedule B is a list of items which the Department of Revenue has deemed to be usually nonexempt. Schedule B follows the body of this rule.

Schedule A—
Usually Exempt Items

Artificial insemination equipment
Augers
Bale loader
Bale transportation equipment
Baler twine
Baler wire
Balers
Binder twine
Binders
Brooders
Bulk feed storage tanks
Bulk milk coolers
Bulk milk tanks
Calf weaners and feeders
Cattle currying and oiling machine
Cattle feeder, portable
Chain saws for commercial use in harvesting timber, lumber and in orchard pruning
Chicken pluckers
Choppers
Combines
Conveyors, portable
Corn pickers
Crawlers, tractor
Crushers
Cultipackers
Cultivators
Curtains and curtain controls for livestock and poultry confinement areas
Debeakers for productive animals
Dehorners for productive animals
Discs
Drags
Dryers
Dusters
Egg handling equipment
Ensilage cutters
Fans, livestock and poultry
Farm tractors
Farm wagons
Farrowing houses, portable
Farrowing crates
Feed carts
Feed grinders/mixers
Feed storage bins
Feeders
Fertilizer distributors
Flooring slats
Foggers
Forage boxes
Forage harvester
Fruit graters
Fruit harvesters
Generators
Gestation crates
Grain augers
Grain binders
Grain conveyors
Grain drills
Grain elevators, portable
Grain handling equipment
Grain planters
Harrows (including spring-tooth harrow)
Hay loaders
Head gates
Heaters, livestock and poultry
Hog feeders, portable
Hoists, farm
Husking machines
Hydro-coolers
Incubators
Irrigation equipment
Livestock feeding, watering and handling equipment
Manure handling equipment (including front- and rear-end loaders and blades)
Manure spreaders
Milk cans
Milk coolers
Milk strainers
Milking equipment (including bulk milk refrigerators, coolers and tanks)
Milking machine
Mowers, hay and rotary blade used exclusively for agricultural purposes
Panels, livestock
Pickers
Planters
Plows
Poultry feeder, portable
Pruning and picking equipment
Repair and replacement parts for exempt machinery
Rollers
Root vegetable harvesters
Rotary hoes
Scales
Seed cleaners
Seed planters
Seeders
Shellers
Silo unloaders
Sorters
Sowers
Sprayers
Spreaders
Sprinkler systems, livestock and poultry

Squeeze chutes
Subsoilers
Threshing machines
Tillers
Tires for exempt machinery
Tractors, farm
Vacuum coolers
Vegetable graders
Vegetable washers
Vegetable waxers
Wagons, farm
Washers, fruit, vegetable and egg
Waxers
Weeders

Schedule B—
Usually Taxable Items

Acetylene torches
Air compressors
Air tanks
All-terrain vehicles (3-, 4- and 6-wheel)
Antifreeze
Automobiles
Axes
Barn ventilators
Brooms
Brushes
Building materials and supplies
Bulldozers
Cement
Chain saws
Cleansing agents and materials
Construction tools
Ear tags
Electrical wiring
Equipment and supplies for home or personal use
Fence building tools
Fence posts
Field toilets
Fire prevention equipment
Fuel additives
Garden hose
Garden rakes and hoes
Gasoline tanks and pumps
Golf carts
Grain bins for storage of grain for resale
Greases and oils
Hammers
Hand tools
Hog ringers
Hog rings
Hydraulic fluid
Lamps
Lanterns
Lawnmowers
Light bulbs
Lubricating oils and grease
Marking chalk
Nails
Office supplies and equipment
Packing room supplies
Personal property installed in or used in housing for farm workers
Post hole diggers (except commercial use in tree farms)
Pumps for household or lawn use
Pumps, gasoline
Refrigerators for home use
Repair tools
Road maintenance equipment
Road scrapers
Roofing
Sanders
Shovels
Silos
Small tools
Snow fence
Snowplows and snow equipment
Staples
Supplies for home or personal use
Tanks, air
Tanks, gasoline
Tools for repair construction
Tractors, garden
Truck beds
Water hose
Welding equipment
Wire, fencing
Wrenches

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-13 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed April 7, 1986, effective June 28, 1986. Amended: Filed Feb. 26, 1987, effective May 28, 1987. Amended: Filed Sept. 28, 1995, effective May 30, 1996.*

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

***Charles A. Johnson, Jr. v. Director of Revenue**, Case Nos RS-83-3258 and RS-83-3259 (A.H.C. 5/1/86). The Administrative Hearing Commission found the petitioner was not entitled to an exemption for his seed cleaner and conveyor for two reasons. First, petitioner used the equipment for commercial processing of soybeans other than his own, a use clearly not within the requirement that the equipment be used exclusively and directly for the production of farm products as required by 144.030.2(22), RSMo and further excluded from exemption by 12 CSR 10-3.274(8) because the commercial cleaning operation was not an agricultural use of the cleaning equipment.*

***Henderson Implement Co., Inc. v. Director of Revenue**, Case No. RS-86-0170 (A.H.C. 6/16/88). The Administrative Hearing Commission held that the taxpayer met its burden of proving that soilmovers were farm machinery within the meaning of the statute. The soilmover was found to be essential to production of farm crops on low-lying land and the farmers used the equipment exclusively for such purposes and the link between controlling drainage on the farmland and the production of the crops is a direct relationship. Therefore, the Administrative Hearing Commission concluded that the soilmovers were exempt from sales tax.*

12 CSR 10-3.276 Sales of Baling Wire, Baling Twine and Binder Twine
(Rescinded June 28, 1986)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 34 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-14 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed April 17, 1986, effective June 28, 1986.

12 CSR 10-3.278 Agricultural Feed and Feed Additives

PURPOSE: This rule interprets the sales tax law as it applies to sellers of agricultural feed and feed additives, and interprets and applies section 144.030.2(22), RSMo.

(1) Feed for livestock and poultry is not subject to the sales tax if the animal consuming the feed is intended to be sold ultimately at retail in processed form, or otherwise, or if the products from the animal will be sold. Feed, purchased by dairymen and fed to dairy cows producing milk, cream or butter, to be sold at retail, is not subject to the sales tax. Feed purchased by poultrymen to feed chickens, when either the chickens or eggs are later sold at retail, is not subject to the sales tax.

(2) When feeding livestock when the livestock is used on the farm or when feeding poultry or dairy cows when the farmer personally consumes the product, the feed is subject to the sales tax. A farmer must be in the business of regularly selling products to purchase feed tax exempt.

(3) Feed is to include all edible food which directly furnishes substances essential for growth, fattening or nourishment of livestock and poultry which is later sold at retail or the

products produced from the livestock or poultry are later sold at retail.

(4) Medications or vaccines, all sales of pesticides, and all sales of bedding which are to be administered or given to livestock or poultry in the production of food or fiber are tax exempt. Examples include hormones, digestive aids, antibiotics, hog wormers, tonics and medical preparations.

(5) Feed additives are tax exempt. The term feed additives means tangible personal property, including medicine or medical additives, which, when mixed with feed for livestock or poultry is to be used in the feeding of livestock or poultry, provided that the resultant mixture constitutes feed whose basic properties as feed have been altered so as to be unsuitable for free feeding.

(6) Signed exemption certificates must be executed by the purchaser and retained by the seller in support of all claimed exemptions.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 60 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-15 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995.*

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

12 CSR 10-3.280 Sale of Agricultural Products by the Producer

PURPOSE: This rule interprets the sales tax law as it applies to sales of agricultural products by the producer and interprets and applies section 144.030.2(22), RSMo.

(1) All persons, such as farmers and fruit or vegetable peddlers, selling agricultural products such as milk, cream, butter, vegetables, fruit, eggs, meat, livestock, poultry, flowers and harvested crops to users and consumers from roadside stands, vehicles, trailers or established market places, even though the products may be raised or purchased by them, are subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 61 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-16 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

12 CSR 10-3.282 Sales of Seed, Pesticides and Fertilizers

PURPOSE: This rule interprets the sales tax law as it applies to sales of seed, pesticides and fertilizers, and interprets and applies section 144.030.2(22), RSMo.

(1) Persons selling seed, pesticides and fertilizers to contractors or other persons for nonagricultural use are subject to the sales tax on the gross receipts from all these sales. Sales of fertilizer for lawns, shrubbery and similar ornamental uses, seed for ornamental purposes, and minerals such as shale and feed for pets are examples of sales subject to the sales tax.

(2) Persons selling seed, pesticides, lime and fertilizers when used for planting or conditioning soil, which soil crops when harvested will be sold at retail, fed to livestock or poultry (which will either be sold at retail in processed form or converted into foodstuffs), or any derived product, for example milk, butter, eggs and the like which will be ultimately sold for final use or consumption, are not subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 62 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-17 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.284 Poultry Defined

PURPOSE: This rule provides a definition of the term poultry for purposes of the sales tax law and interprets and applies section 144.030.2(22), RSMo.

(1) Poultry is defined as any domesticated bird normally raised or grown as food for human consumption such as adult and baby chickens, turkeys, ducks, guinea fowl and geese.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-18 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

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

***Exotic Animal Paradise, Inc. v. Director of Revenue**, Case Nos. RS-83-2797, RS-83-2798 and RS-83-2799 (A.H.C. 2/18/86). The taxpayer purchased and maintained animals for display in its wild animal park. The Administrative Hearing Commission determined that these animals were neither poultry nor livestock normally raised or grown as food for human consumption.*

12 CSR 10-3.286 Livestock Defined

PURPOSE: This rule provides a definition of the term livestock for purposes of the sales tax law and interprets and applies section 144.030.2(22), RSMo.

(1) Livestock is defined as an animal normally raised or grown as food for human consumption such as cattle, swine and sheep. Other animals not normally raised or grown as food for human consumption such as horses, cats, dogs, chinchillas and laboratory animals such as rats, mice, hamsters, primates and guinea pigs are not livestock and feed for these animals is subject to the sales tax.

(2) Example 1: A rabbit farmer raises rabbits which are sold for processing as food for human consumption. Persons selling the feed would not be subject to sales tax as the rabbits are considered livestock in this situation.

(3) Example 2: A person selling feed to a pet shop raising rabbits which are sold to the general public for pets is subject to the sales tax on the feed at the time of sale. Persons selling rabbits for pets are subject to the sales tax on the gross receipts from all these sales.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-19 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Exotic Animal Paradise, Inc. v. Director of Revenue**, Case Nos. RS-83-2797, RS-83-2798 and RS-83-2799 (A.H.C. 2/18/86). The taxpayer purchased and maintained animals for display in its wild animal park. The Administrative Hearing Commission determined that these animals were neither poultry*

nor livestock normally raised or grown as food for human consumption.

12 CSR 10-3.288 Florists

PURPOSE: This rule interprets the sales tax law as it applies to florists and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Persons selling flowers and flower arrangements, bouquets, wreaths, seeds, plants, shrubs, trees or any other articles of tangible personal property are subject to the sales tax on all these sales.

(2) A Missouri florist, who receives the original order and subsequently wires that order either to another instate florist or an out-of-state florist for delivery, is subject to the sales tax on these transactions. Where an outstate florist accepts the original order and telegraphs the order to a Missouri florist, the Missouri florist is not subject to the Missouri sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 63 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-20 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.290 Sellers of Poultry

PURPOSE: This rule interprets the sales tax law as it applies to sellers of poultry and interprets and applies sections 144.010 and 144.030.2(22), RSMo.

(1) Persons, such as those operating hatcheries, selling poultry are subject to the sales tax on the gross receipts from all sales of poultry which are not for resale. Exemption certificates must be retained by those persons as evidence that the sales made by them are exempt under the conditions of a sale for resale.

(2) Sellers of poultry are not subject to the sales tax when the poultry is sold to persons who raise the poultry for subsequent sale to a food processor or who raise the poultry for a dual purpose of egg production and ultimate sale to a food processor.

(3) Services, such as hatcheries or rendering custom hatching, are not subject to the sales tax, provided the service charges are segregated on the billing from sales of poultry at the time the charges are made.

(4) Persons selling feed to be fed to poultry, which will ultimately be sold in dressed or processed form, or the product from poultry, such as eggs, which will be sold, are not subject to the sales tax.

(5) Sales of poultry to persons for the sole purpose of producing eggs, which eggs are later sold at retail, are subject to the sales tax.

(6) A seller is subject to the sales tax on the total gross receipts when a purchaser is not able to readily establish or determine the number of poultry which will be used or consumed at the time of purchase as opposed to the number purchased for resale. Normal mortality is not use or consumption.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 65 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-22 was last filed Dec. 5, 1975, effective Dec. 15, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***P.F.D. Supply Corporation v. Director of Revenue**, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The commission, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.*

*Relying on its previous decision in **Blueside Co. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84) the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to **Blueside**, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.*

*However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in **Overland Steel, Inc. v. Director of Revenue**, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, Art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the **Overland Steel** case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2) in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.*

Finally, the commission held that nonreusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on these items.

12 CSR 10-3.292 Ingredients or Component Parts

PURPOSE: This rule defines ingredients or component parts for purposes of the sales tax law and interprets and applies section 144.030.2(2) and (5), RSMo.

(1) In order to be considered as ingredients or component parts of the new personal property resulting from manufacturing, or otherwise, the materials must be purchased by the manufacturer for the purpose of becoming a recognizable, essential and basic ingredient or component part of the new personal property which is to be ultimately sold for final

use or consumption. Materials qualify for this exemption only to the extent that they become an ingredient or component part of the new personal property.

(2) Materials which through accident, wear or similar means become incorporated within the product for sale are not exempt because they were not purchased for the purpose of becoming an ingredient or component part of new personal property which will ultimately be sold for final use or consumption.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 77 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-23 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***The Blueside Companies, Inc. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84). The issue in this case was whether chemicals used by the taxpayer in its hide processing operation were partially or totally exempt from sales/use taxes under section 144.030.2(2), RSMo (Supp. 1983) as "materials. . . which when used. . . become a component part or ingredient of the new personal property resulting from such manufacturing, processing, compounding, producing or fabricating. . . ."*

The Administrative Hearing Commission ruled that section 144.030.2(2) did not just apply to manufacturers. The statute applied instead to materials used in manufacturing. It is the goods that are used, not the purchaser of the goods, which defines the extent of the exemption.

Secondly, the commission found that the taxpayer was entitled to claim the exemption even though it actually performed the work in question on a contractual basis. It is not necessary that the taxpayer be manufacturing its own goods, and even if it were, as noted previously, the exemption in question is not limited to manufacturers but to manufacturing, etc. The fact that the taxpayer worked on a contract basis was irrelevant.

The commission also found that the key to whether materials become a component part or ingredient of the new personal property was whether the taxpayer purchased them for its own use and consumption or for resale. Looking to legislative history the court found that section 144.030.2(2) was in fact simply a repetition of the exclusions already inherent in the definitional provisions of section 144.010(8) defining "sale at retail."

*While acknowledging that on two previous occasions courts of the state of Missouri have ruled in the taxpayer's favor in cases similar to this one, the commission noted that such rulings were not in accordance with either the well-established rule that exemption statutes must be strictly construed against the taxpayer or the historical purpose of the statute as it was explained in **Southwestern Bell Telephone v. Morris**, 345 SW2d 62 (Mo. En Banc 1961). The commission noted that courts in other states have consistently ruled that the component part exemption is akin to the sale-for-resale philosophy and that chemicals which are not detectable in the finished product do not constitute component parts. Numerous cases from other jurisdictions were cited. Moreover, the mere presence of traces of a chemical in a final product does not make the chemical a component part. The court cited as an example microscopic particles of water vapor and other gases which are left in mined coal by explosives. These trace chemicals do not make the explosives a component part.*

The court also cited the elimination of double taxation as the rationale for the component part exemption. Therefore, if the presence of a material in a finished product is merely incidental then the material was not purchased for resale and the purchase should be taxable. In the case at hand the court noted that various products that were purchased to form chrome-tan were totally retained in the product. These materials should be exempt because they were purchased with the intent that they would be resold as part of the product.

The commission distinguished cases where part of the material was intended to become a component part. While some states have taken the position that the purchase of a material with the intention that part of it shall remain in the product at the time of resale will exempt all of the material, the commission took the position that only the part which was intended to become a component part should be exempt, noting that section 144.030.2(2) expressly provides that exemptions for various materials only apply to the extent they are incorporated into products which are intended for resale.

***Hardee's of Springfield, Inc., et al. v. Director of Revenue**, Case No. RS-82-2181 (A.H.C. 6/11/85). The issue in this case was the imposition of use tax upon shortening used for deep frying foods at petitioner's restaurants. Petitioner asserted that use tax was not due on any of the shortening because it became an ingredient or component part of new personal property and thus exempt as provided by section 144.030.3(1), RSMo (1978). The director countered that petitioner had to be a manufacturer to qualify for this exemption and that no exemption was proper unless the ingredient was totally incorporated into the new product.*

*The Administrative Hearing Commission cited **Blueside Company v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84) for the proposition that the exemption also applies to processing. However, again citing **Blueside**, the commission held that the ingredient or component part exemption is only applicable to the extent that the article is incorporated in new property. In addition, those articles whose presence in the final product is not necessary or essential are not exempt. The commission found that 50% of the shortening in question was absorbed and therefore exempt.*

The bulk of the unabsorbed shortening was sold for salvage. Petitioner contended that this salvage sale constituted a retail sale and that its use of shortening was therefore exempt under section 144.615, RSMo (1978) as property held for resale in the regular course of business. However, the commission rejected petitioner's argument by stating, "If the by-product is an inconsequential portion of the taxpayer's business and the by-product is sold as salvage primarily to avoid the cost of refuse collection, the articles in the by-product would not be exempt from use tax because those articles would be held substantially for use and not for resale."

***P.F.D. Supply Corporation v. Director of Revenue**, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The Administrative Hearing Commission, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.*

*Relying on its previous decision in **Blueside Co. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84), the Administrative Hearing Commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into*

the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to ***Blueside****, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.*

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in ***Overland Steel, Inc. v. Director of Revenue****, 647 SW2d 535 (Mo. En Banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, Art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the* ***Overland Steel*** *case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2) in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.*

Finally, the commission held that non-reusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on these items.

Teepak, Inc. v. Director of Revenue*, Case Nos. RS-86-0123 and RS-86-1430 (A.H.C. 5/13/88). In this case, the taxpayer argued that casings used in the manufacture of hot dogs were exempt from sales tax under the component part exemption. The Administrative Hearing Commission rejected the taxpayer's argument, finding that there was no purposeful incorporation of the casing, or its parts, into the finished hot dog, therefore, the component part exemption did not apply.*

Pea Ridge Iron Ore Co., Inc. v. Director of Revenue*, Case Nos. RS-84-1398, RS-84-1468, RS-84-1469, RS-84-1470, RS-84-1728, RS-84-1729 and RS-86-0517 (A.H.C. 6/30/88). The primary substantive issue was whether the taxpayer's purchases of grinding balls, grinding rods, bentonite and olivine were exempt under the steel products exemption in 144.030.2(2), RSMo which exempts "materials and manufactured goods which are ultimately consumed in the manufacturing process by becoming, in whole or in part, a component part or ingredient of steel products intended to be sold ultimately for final use or consumption." The Administrative Hearing Commission held that the presence of the grinding media and bentonite in the final product, though a secondary purpose and not the primary intended purpose, was sufficient to qualify the materials for the steel products exemption. The materials were purchased with an intent and purpose of becoming an identifiable and detectable ingredient or component part of the iron or pellets, and therefore were exempt.*

Marshall Scott Enterprises, Inc. v. Director of Revenue*, Case No. RS-87-0786,* ***Kentucky Fried Chicken of Spanish Lake, Inc.****, Case No. RS-87-0787 and* ***Al-Tom Investment, Inc. d/b/a Kentucky Fried Chicken****, Case No. RS-87-0788 (A.H.C. 7/8/88). The taxpayers contended that the purchases of shortening were excluded from taxation under 144.010.1(8), RSMo (1994), because the shortening was substantially incorporated in the food products and therefore was for resale as a portion of the food products. The Administrative Hearing Commission rejected this argument and reaffirmed its decision in* ***Blueside Companies, Inc. v. Director of Revenue****, Case No. RS-82-4625 (10/5/84).*

Golden Business Forms, Inc. v. Director of Revenue*, Case No. RS-86-2524 (A.H.C. 9/26/88). The Administrative Hearing Commission ruled that even though printing plates and punches are necessary to the manufacturing process, the plates and punches do not become a component part or ingredient of the final printed product. In order to be a component part or ingredient of the final product the plates and punches must be physically incorporated into the printed business forms. The evidence was that they did not.*

St. Joe Minerals Corporation v. Director of Revenue*, Case Nos. RS-85-1812 and RS-85-2289 (A.H.C. 9/13/88). The Administrative Hearing Commission reaffirmed earlier decisions that held that before materials can be exempt as component parts or ingredients they must be shown to have been purchased for the purpose of becoming part of the final product. They must also be shown to have become a part of the product and must be detectable in the final product. They must also serve a purpose in the final product and not be just an impurity. It is not enough that the materials are necessary to the manufacturing process; it must be shown that the materials are purposefully incorporated into that final product.*

12 CSR 10-3.294 Component Parts

PURPOSE: This rule interprets the sales tax law as it applies to component parts and interprets and applies section 144.030.2(4) and (5), RSMo.

(1) Sellers of parts to manufacturers or other producers who sell component parts or substances or who physically incorporate property as an ingredient or constituent of other tangible personal property which they manufacture or otherwise produce and sell are not subject to the sales tax. This exemption is applicable to the extent that the property or its reduced component substances are resold or incorporated into tangible personal property intended to be ultimately sold at retail for use or consumption. Property which is used or consumed in the manufacturing or other production process, but not physically incorporated into tangible personal property for ultimate retail sales as a product which the producer or manufacturer produces or sells, is subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 77 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-24 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

The Blueside Companies, Inc. v. Director of Revenue*, Case No. RS-82-4625 (A.H.C. 10/5/84). The issue in this case was whether chemicals used by the taxpayer in its hide processing operation were partially or totally exempt from sales/use taxes under section 144.030.2(2), RSMo (Supp. 1983) as "materials. . . which when used. . . become a component part or ingredient of the new personal property resulting from such manufacturing, processing, compounding, producing or fabricating. . . ."*

The Administrative Hearing Commission ruled that section 144.030.2(2) did not just

apply to manufacturers. The statute applied instead to materials used in manufacturing. It is the goods that are used, not the purchaser of the goods, which defines the extent of the exemption.

Secondly, the commission found that the taxpayer was entitled to claim the exemption even though it actually performed the work in question on a contractual basis. It is not necessary that the taxpayer be manufacturing its own goods, and even if it were, as noted previously, the exemption in question is not limited to manufacturers but to manufacturing, etc. The fact that the taxpayer worked on a contract basis was irrelevant.

The commission also found that the key to whether materials become a component part or ingredient of the new personal property was whether the taxpayer purchased them for its own use and consumption or for resale. Looking to legislative history the court found that section 144.030.2(2) was in fact simply a repetition of the exclusions already inherent in the definitional provisions of section 144.0101.(8) defining "sale at retail."

While acknowledging that on two previous occasions courts of the state of Missouri have ruled in the taxpayer's favor in cases similar to this one, the commission noted that such rulings were not in accordance with either the well-established rule that exemption statutes must be strictly construed against the taxpayer or the historical purpose of the statute as it was explained in ***Southwestern Bell Telephone v. Morris****, 345 SW2d 62 (Mo. banc 1961). The commission noted that courts in other states have consistently ruled that the component part exemption is akin to the sale-for-resale philosophy and that chemicals which are not detectable in the finished product do not constitute component parts. Numerous cases from other jurisdictions were cited. Moreover, the mere presence of traces of a chemical in a final product does not make the chemical a component part. The court cited as an example microscopic particles of water vapor and other gases which are left in mined coal by explosives. These trace chemicals do not make the explosives a component part.*

The court also cited the elimination of double taxation as the rationale for the component part exemption. Therefore, if the presence of a material in a finished product is merely incidental then the material was not purchased for resale and the purchase should be taxable. In the case at hand the court noted that various products that were purchased to form chrome-tan were totally retained in the product. These materials should be exempt because they were purchased with the intent that they would be resold as part of the product.

The commission distinguished cases where part of the material was intended to become a component part. While some states have taken the position that the purchase of a material with the intention that part of it shall remain in the product at the time of resale will exempt all of the material, the commission took the position that only the part which was intended to become a component part should be exempt, noting that section 144.030.2(2) expressly provides that exemptions for various materials only apply to the extent they are incorporated into products which are intended for resale.

Hardee's of Springfield, Inc., et al. v. Director of Revenue*, Case No. RS-82-2181 (A.H.C. 6/11/85). The issue in this case was the imposition of use tax upon shortening used for deep frying goods at petitioner's restaurants. Petitioner asserted that use tax was not due on any of the shortening because it became an ingredient or component part of new personal property and thus was exempt as provided by section 144.030.3(1), RSMo (1978). The director countered that petitioner had to be a manufacturer to qualify for this exemption and that no exemption was proper unless the ingredient was totally incorporated into the new product.*

The commission cited ***Blueside Company v. Director of Revenue****, Case No. RS-82-4625 (A.H.C. 10/5/84) for the proposition that the exemption also applies to processing. However, again citing* ***Blueside****, the commission held that the ingredient of component part exemption is only applicable to the extent that the article is incorporated in new property. In addition, those articles whose presence in the final product is not necessary or essential are not exempt. The Administrative Hearing Commission found that 50% of the shortening in question was absorbed and therefore exempt.*

The bulk of the unabsorbed shortening was sold for salvage. Petitioner contended that this salvage sale constituted a retail sale and that its use of shortening was therefore exempt under section 144.615, RSMo (1978) as property held for resale in the regular course of business. However, the commission rejected petitioner's argument by stating, "If the by-product is an inconsequential portion of the taxpayer's business and the by-product is sold as salvage primarily to avoid the cost of refuse collection, the articles in the by-product would not be exempt from use tax because those articles would be held substantially for use and not for resale."

P.F.D. Supply Corporation v. Director of Revenue*, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The Administrative Hearing Commission, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.*

Relying on its previous decision in ***Blueside Co. v. Director of Revenue****, Case No. RS-82-4625 (A.H.C. 10/5/84) the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to* ***Blueside****, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.*

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in ***Overland Steel, Inc. v. Director of Revenue****, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, Art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the* ***Overland Steel*** *case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2) in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good*

faith. Based upon this the commission found that the seller's good faith exempted it from liability.

Finally, the commission held that non-reusable paper and plastic products were purchased for resale, inasmuch as they were provided to restaurant patrons as part of the cost of the food and beverages. Therefore, the sale to the restaurants was not a taxable transaction and no tax was due from the petitioner on such items.

***Hardee's of Springfield, Inc. et al. v. Director of Revenue**, Case No. RS-82-wr 42181 (A.H.C. 6/11/85). The Administrative Hearing Commission held that the ingredient or component part exemption is only applicable to the extent that the article is incorporated in new property. In addition, those articles whose presence in the final product is not necessary to essential are not exempt. The commission found that 50% of the shortening in question was absorbed and therefore exempt.*

***Teepak, Inc. v. Director of Revenue**, Case Nos. RS-86-0123 and RS-86-1430 (A.H.C. 5/13/88). In this case, the taxpayer argued that casings used in the manufacture of hot dogs were exempt from sales tax under the component part exemption. The Administrative Hearing Commission rejected the taxpayer's argument, finding that there was no purposeful incorporation of the casing, or its parts, into the finished hot dog, therefore, the component part exemption did not apply.*

***Pea Ridge Iron Ore Co., Inc. v. Director of Revenue**, Case Nos. RS-84-1398, RS-84-1468, RS-84-1469, RS-84-1470, RS-84-1728, RS-84-1729 and RS-86-0517 (A.H.C. 6/30/88). The primary substantive issue was whether the taxpayer's purchases of grinding balls, grinding rods, bentonite and olivine were exempt under the steel products exemption in 144.030.2(2), RSMo which exempts "materials and manufactured goods which are ultimately consumed in the manufacturing process by becoming, in whole or in part, a component part or ingredient of steel products intended to be sold ultimately for final use or consumption." The Administrative Hearing Commission held that the presence of the grinding media and bentonite in the final product, though a secondary purpose and not the primary intended purpose, was sufficient to qualify the materials for the steel products exemption. The materials were purchased with an intent and purpose of becoming an identifiable and detectable ingredient or component part of the iron ore pellets, and therefore were exempt.*

***Marshall Scott Enterprises, Inc. v. Director of Revenue**, Case No. RS-87-0786, **Kentucky Fried Chicken of Spanish Lake, Inc.**, Case No. RS-87-0787 and **Al-Tom Investment, Inc. d/b/a Kentucky Fried Chicken**, Case No. RS-87-0788 (A.H.C. 7/8/88). The taxpayers contended that the purchases of shortening were excluded from taxation under 144.010.1(8), RSMo, because the shortening was substantially incorporated in the food products and therefore was for resale as a portion of the food products. The Administrative Hearing Commission rejected this argument and reaffirmed its decision in **Blueside Companies, Inc. v. Director of Revenue**, Case No. RS-82-4625 (10/5/84).*

***Snap Shot Photo v. Director of Revenue**, Case No. RS-87-1056 (A.H.C. 8/29/88). The Administrative Hearing Commission found that all chemicals used in the photofinishing process as part of a closed vat system, and not washed away during the process, were exempt from taxation because "all such chemicals do become ingredients and component parts of all the products over time."*

***St. Joe Minerals Corporation v. Director of Revenue**, Case Nos. RS-85-1812 and RS-85-2289 (A.H.C. 9/13/88). The Administrative Hearing Commission reaffirmed earlier decisions that held that before materials can be exempt as component parts or ingredients they must be shown to have been purchased for the purpose of becoming part of the final product. They must also be shown to have become a part of the product and must be detectable in the final product. They must also serve a purpose in the final product and not be just an impurity. It is not enough that the materials are necessary to the manufacturing process; it must be shown that the materials are purposefully incorporated into that final product.*

12 CSR 10-3.296 Manufacturing Defined
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMO 1978. S.T. regulation 030-25 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

***Wendy's of Mid-America, Inc. v. Department of Revenue**, Case No. RS-79-0222 (A.H.C. 7/22/82). Machinery and equipment used in fast food restaurants are not entitled to section 144.0302.(4), RSMo exemption because fast food restaurants clearly do not constitute manufacturing plants. Section 144.615(6), RSMo exemption from use tax is applicable to foil, wax paper and bags used in fast food restaurants because they are held solely to be incorporated into products which are resold in the regular course of taxpayer's business.*

12 CSR 10-3.298 Electrical Appliance Manufacturers
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-26 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.300 Common Carriers

PURPOSE: This rule interprets the sales tax law, section 144.030.2(3), RSMo, as it applies to common carriers.

(1) Purchases of materials, replacement parts and equipment on motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers may qualify for the exemption, provided the purchases are used directly upon and for the repair and maintenance or manufacture of the carriers.

(2) Equipment on motor vehicles used by common carriers which is exempt from sales tax includes power take-off (PTO) units which are attached to the transmission of the power unit of the vehicle and all materials and replacement parts for PTO units.

(3) Materials and replacement parts for motor vehicles which are used by common carriers and which qualify for exemption from sales tax include, but are not necessarily limited to, grease, motor oil, antifreeze, fuel additives, paint for body work and radio repair parts purchased for use on the vehicle.

(4) Determination of whether a vehicle qualifies for exemption as a common carrier should be made in accordance with the provisions of 12 CSR 10-3.304.

(5) Motor vehicles, watercraft, railroad rolling stock or aircraft engaged as a contract carrier or as a private carrier cannot qualify for the exemption.

(6) Trailers and semitrailers, whether engaged as common carriers or otherwise, cannot qualify for the exemption.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-27 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980,*

effective Jan. 1, 1981. Amended: Filed Dec. 10, 1986, effective April 11, 1987.

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

Western Trailer Service, Inc. v. LePage, *575 SW2d 173 (Mo. banc 1978). Where, under contract, employees of trailer company went to Kansas, picked up trailers and brought them into state and, after repairs were made and repair parts installed, trailers were returned under contract to Kansas by trailer company employees, there was dealing between persons of different states in which importation was an essential feature or formed a component part of the transaction, with retail sales made in commerce between the two states, to which an exemption from sales tax for being in interstate commerce applied.*

12 CSR 10-3.302 Airline Defined
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-27A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.304 Common Carrier Exemption Certificates

PURPOSE: This rule provides guidelines as to the use of common carrier exemption certificates and interprets and applies sections 144.030.2(3) and 144.080, RSMo.

(1) When a sale to a common carrier is made, an exemption certificate should be completed. The certificate should contain the Public Service Commission (PSC) number and Interstate Commerce Commission (ICC) number. A determination can be made as to whether the vehicle is used as a common carrier or a contract carrier from the Missouri PSC number. If the vehicle is used as a contract carrier, the PSC number will be followed by a dash "X" (T5000—X). If the common carrier has only an ICC number, a determination should be made by the seller as to whether the purchaser is actually engaged as a common carrier and the number must appear on all supporting documents.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-28 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

12 CSR 10-3.306 Aircraft
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-29 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.308 Boat Manufacturing Equipment
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-30 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.310 Truckers
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-31 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.312 Local Delivery and Terminal Equipment
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. s.t. REGULATION 030-32 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.314 Patterns and Dies
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 54 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-33 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.316 Replacement Machinery and Equipment
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 26 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-34 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

Floyd Charcoal Co. v. Director of Revenue*, 599 SW2d 173 (Mo. banc 1980). To determine if new or replacement equipment is exempt from sales or use tax, an integrated plant approach is used to determine if it is used directly in manufacturing products.*

St. Joseph Light & Power Co. v. Director of Revenue*, Case No. RS-79-0162 (A.H.C. 1/21/83). Taxpayer utility company purchased a new boiler to replace a boiler that was worn out. The issue is whether the boiler's purchase should be exempt from use tax pursuant to section 144.030.3(3), RSMo which exempts the purchase of machinery and equipment used directly for manufacturing or fabricating when the purchase is caused by reason of a design or product change, or whether it is exempt under section 144.030.3(4), RSMo as machinery or equipment used to expand an existing manufacturing plant. The Administrative Hearing Commission found that because the boiler was purchased to replace a worn-out boiler, it was precluded from finding that the machinery was purchased by reason of a design or product change. Therefore, taxpayer was not entitled to an exemption on this basis. However, the commission found that the new boiler did expand the plant's capacity by five megawatts and allowed the boiler to operate an additional two days per month. Based upon this finding, the commission concluded that the new boiler was equipment purchased and used to expand an existing manufacturing plant in this state.*

Empire District Electric Co. v. Director of Revenue, *Case No. RS-79-0249 (A.H.C. 3/29/83). In this case the issue was the taxability of a transformer, concrete, oil and antifreeze used in an electric generating facility. The Administrative Hearing Commission was faced with the task of applying the new "integrated plant" theory which the Missouri Supreme Court adopted in* ***Floyd Charcoal Co. v. Director of Revenue****, 599 SW2d 173 (Mo. banc 1980) and* ***Noranda Aluminum v. Missouri Department of Revenue****, 599 SW2d 1 (Mo. banc 1980) to determine whether these items were exempt under section 144.030.3(4), RSMo from sales and use tax as "machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating." The commission found that while Missouri has adopted the integrated plant theory, it is apparent from the statute limiting language*

that not all items used in the manufacture of a product are exempt from sales or use tax.

With respect to the oil and antifreeze the commission found, first of all, that it did not qualify as a "device" and thus could not be considered equipment and machinery. It also found that the oil and antifreeze, though used in the start up of equipment, was not solely required for installation and construction. It continued to be used in the machinery after start up and, therefore, it was not exempt as supplies used solely for installation or construction of this machinery or equipment.

With respect to the concrete that was used to construct duct banks protecting the electrical system and manhole covers for access to the electrical system, the court found that the decision in ***Noranda Aluminum*** *was not controlling, because in that case the materials in question were used to construct duct banks which prevented the spillage of molten aluminum. Because the cement in question was not used to protect the electrical system from the manufacturing process itself, it was found not to be an integral part of that manufacturing process. Therefore, the concrete was not exempt from sales or use tax.*

With respect to the step-up transformer, the court found that it had two functions. It had a nonexempt function controlling the transmission of electricity to customers. The commission relied on New York law to the effect that the generation of voltage is manufacturing, the transmission of voltage is not. However, several times a year the transformer was used to start a generator which manufactures electricity. On those occasions the transformer was used in the manufacturing process. Therefore, the transformer is exempt from sales tax or use tax, because section 144.030.3(4), RSMo does not require that machinery be used exclusively or even primarily for manufacturing to qualify for exemption (see also ***State ex rel. Ozark Lead Co. v. Goldberg****, 610 SW2d 954 (1981) and* ***Noranda Aluminum v. Missouri Department of Revenue****, 599 SW2d 1 (Mo. banc 1980)).*

American Lithographers, Inc. v. Director of Revenue*, Case No. RS-87-1355 (A.H.C. 10/25/88). The Administrative Hearing Commission found that the purchase of printing plates was exempt from the imposition of sales and use tax under 144.030.2(4), RSMo as "replacement parts replaced by reason of product or design change." The Administrative Hearing Commission compared the printing plates with the dies and molds used by automobile manufacturers and then cited the Department of Revenue's regulation 12 CSR 10-3.316(2) which states in part that "if an automobile plant must replace machinery because the present machinery cannot do the work due to changes on the new models, the machinery is not subject to the sales tax."*

Tension Envelope Corp. v. Director of Revenue*, Case No. RS-87-0420 (A.H.C. 12/6/88). The Administrative Hearing Commission found that printing plates were exempt under 144.030.2(4), RSMo as "replacement parts replaced by reason of product or design change." In reference to the artwork and the prep work, the Administrative Hearing Commission, citing the case of* ***Empire District Electric v. Director of Revenue****, Case No. RS-79-0249, stated that one requirement for eligibility under section 144.030 is that the item by a "device" and because the artwork and prep work are not devices their purchase was not exempt under 144.030.2(4).*

12 CSR 10-3.318 Ceramic Greenware Molds

(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-35 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.*

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

12 CSR 10-3.320 New or Expanded Plant

(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-36 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded and readopted: Filed Sept. 28, 1989, effective Jan. 12, 1990. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

Wendy's of Mid-America, Inc. v. Department of Revenue*, Case No. RS-79-0222 (A.H.C. 7/22/82). Machinery and equipment used in fast food restaurants are not entitled to section 144.030.2(4), RSMo exemption because fast food restaurants clearly do not constitute manufacturing plants. Section 144.615(6), RSMo exemption from use tax is applicable to foil, wax paper and bags used in fast food restaurants because they are held solely to be incorporated into products which are resold in the regular course of taxpayer's business.*

Jackson Excavating Co. v. Department of Revenue*, 649 SW2d 48 (Mo. banc 1983). The sole issue in this case is whether machinery used to purify water for human consumption is entitled to a sales/use tax exemption under section 144.030.3.(4), RSMo as machinery used to establish a new or expand an existing manufacturing plant. In this case the Supreme Court cited* ***West Lake Quarry & Material Co. v. Schaffner****, 451 SW2d 140 (Mo. banc 1970), and* ***Heidelberg Central, Inc. v. Director of Revenue****, 476 SW2d 502 (Mo. banc 1972), as the basis for finding that the purification of water was "a transformation of raw material by the use of machinery, labor and skill into a product for sale which has an intrinsic and merchantable value in a form suitable for new uses." In passing, the court acknowledged the decision in* ***State ex rel. A.M.F., Inc. v. Spradling****, 518 SW2d 58 (Mo. banc 1974), where it held that the retreading of worn tire carcasses was not manufacturing, but did not distinguish it from the case at hand.*

St. Joseph Light & Power Co. v. Director of Revenue*, Case No. RS-79-0162 (A.H.C. 1/21/83). Taxpayer utility company purchased a new boiler to replace a boiler that was worn out. The issue is whether the boiler's purchase should be exempt from use tax pursuant to section 144.030.3(3), RSMo which exempts the purchase of machinery and equipment used directly for manufacturing or fabricating when the purchase is caused by reason of a design or product change, or whether it is exempt under section 144.030.3(4), RSMo as machinery or equipment used to expand an existing manufacturing plant. The Administrative Hearing Commission found that because the boiler was purchased to replace a worn-out boiler, it was precluded from finding that the machinery was purchased by reason of a design or product change. Therefore, taxpayer was not entitled to an exemption on this basis. However, the commission found that the new boiler did expand the plant's capacity by five megawatts and allowed the boiler to operate an additional two days per month. Based upon this finding, the commission concluded that the new boiler was equipment purchased and used to expand an existing manufacturing plant in this state.*

Empire District Electric Co. v. Director of Revenue*, Case No. RS-79-0249 (A.H.C. 3/29/83). In this case the issue was the taxability of a transformer, concrete, oil and*

antifreeze used in an electric generating facility. The Administrative Hearing Commission was faced with the task of applying the new "integrated plant" theory which the Missouri Supreme Court adopted in ***Floyd Charcoal Co. v. Director of Revenue****, 599 SW2d 173 (Mo. banc 1980) and* ***Noranda Aluminum v. Missouri Department of Revenue****, 599 SW2d 1 (Mo. banc 1980) to determine whether these items were exempt under section 144.030.3(4), RSMo from sales and use tax as "machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating." The commission found that while Missouri has adopted the integrated plant theory, it is apparent from the statute limiting language that not all items used in the manufacture of a product are exempt from sales or use tax.*

With respect to the oil and antifreeze the commission found, first of all, that it did not qualify as a "device" and thus could not be considered equipment and machinery. It also found that the oil and antifreeze, though used in the start up of equipment, was not solely required for installation and construction. It continued to be used in the machinery after start up and, therefore, it was not exempt as supplies used solely for installation or construction of this machinery or equipment.

With respect to the concrete that was used to construct duct banks protecting the electrical system and manhole covers for access to the electrical system, the court found that the decision in ***Noranda Aluminum*** *was not controlling, because in that case the materials in question were used to construct duct banks which prevented the spillage of molten aluminum. Because the cement in question was not used to protect the electrical system from the manufacturing process itself, it was found not to be an integral part of that manufacturing process. Therefore, the concrete was not exempt from sales or use tax.*

With respect to the step-up transformer, the court found that it had two functions. It had a nonexempt function controlling the transmission of electricity to customers. The commission relied on New York law to the effect that the generation of voltage is manufacturing, the transmission of voltage is not. However, several times a year the transformer was used to start a generator which manufactures electricity. On those occasions the transformer was used in the manufacturing process. Therefore, the transformer is exempt from sales tax or use tax, because section 144.030.3(4), RSMo does not require that machinery be used exclusively or even primarily for manufacturing to qualify for exemption.

12 CSR 10-3.324 Rock Quarries
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-38 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

West Lake Quarry & Material Co. v. Schaffner*, 451 SW2d 140 (Mo. banc 1970). Taxpayer's removal of rock from the ground is included in the term mining as used in section 144.030.3(4). The court found equipment used to mine and refine rock including crushing equipment, was exempt from sales and use tax. Equipment used to load customer's trucks is not directly used in either manufacturing or mining the product intended to be sold or required to be exempt under section 144.030.3(4), RSMo.*

Rotary Drilling Supply, Inc. v. Director of Revenue*, 662 SW2d 496 (Mo. banc 1983). Petitioner contended that its sales of drilling rigs were exempt from sales tax under section 144.030.3(4), RSMo on the grounds that they were purchased from petitioner for the purpose of expanding or establishing mining plants in this state. Petitioner had failed to obtain exemption certificates from its purchasers and, therefore, it would be liable for uncollected tax. The court refused to recognize water-well drilling as a form of mining. The use of rigs to drill water wells for any purpose or exploratory holes would not constitute mining within the exemption requirement. The evidence was that this was the primary function performed by these rotary drills. The court then went on to reject the Administrative Hearing Commission's conclusion that none of the sales were exempt because a predominant number of rigs were not put to an exempt use. The case was remanded for an evidentiary hearing at which the commission was to determine the exempt status of each rig.*

American Industries Resources Corp., Missouri Mining, Inc. v. Director of Revenue*, Case Nos. RS 84-0922—0925 (A.H.C. 10/28/88) Taxpayer is in the business of mining coal. It operated a surface coal mine or strip mine. Taxpayer purchased a bulldozer for reclamation purposes but also occasionally used it to remove the last layer of coal covering the coal field. The bulldozer was found to be exempt as "machinery. . . purchased and used to establish new or expand existing. . . mining. . . .plants in the state" under 144.030.2(5), RSMo.*

12 CSR 10-3.326 Direct Use
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 26 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-39 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed May 12, 1987, effective Aug. 27, 1987. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

Floyd Charcoal Co. v. Director of Revenue*, 599 SW2d 173 (Mo. banc 1980). To determine if new or replacement equipment is exempt from sales or use tax, an integrated plant approach is used to determine if it is used directly in manufacturing products.*

Wendy's of Mid-America, Inc. v. Department of Revenue*, Case No. RS-79-0222 (A.H.C. 7/22/82). Machinery and equipment used in fast food restaurants are not entitled to section 144.030.2(4), RSMo exemption because fast food restaurants clearly do not constitute manufacturing plants. Section 144.615(6), RSMo exemption from use tax is applicable to foil, wax paper and bags used in fast food restaurants because they are held solely to be incorporated into products which are resold in the regular course of taxpayer's business.*

Jackson Excavating Co. v. Department of Revenue*, 646 SW2d 48 (Mo. banc 1983). The sole issue in this case is whether machinery used to purify water for human consumption is entitled to a sales/use tax exemption under section 144.030.3(4), RSMo as machinery used to establish a new or expand an existing manufacturing plant. In this case the Supreme Court cited* ***West Lake Quarry & Material Co. v. Schaffner****, 451 SW2d 140 (Mo. banc 1970), and* ***Heidelberg Central, Inc. v. Director of Revenue****, 476 SW2d 502 (Mo. banc 1972), as the basis for finding that the purification of water was "a transformation of raw material by the use of machinery, labor and skill into a product for sale which has an intrinsic and merchantable value in a form suitable for new uses." In passing, the court acknowledged the decision in* ***State ex rel. AMF, Inc. v. Spradling****, 518 SW2d 58 (Mo. banc 1974), where it held that the retreading of worn tire carcasses was not manufacturing, but did not distinguish it from the case at hand.*

Empire District Electric Co. v. Director of Revenue*, Case No. RS-79-0249 (A.H.C.*

3/29/83). In this case the issue was the taxability of a transformer, concrete, oil and antifreeze used in an electric generating facility. The commission was faced with the task of applying the new integrated plant theory which the Missouri Supreme Court adopted in ***Floyd Charcoal Co. v. Director of Revenue****, 599 SW2d 173 (Mo. banc 1980) and* ***Noranda Aluminum v. Missouri Department of Revenue****, 599 SW2d 1 (Mo. banc 1980) to determine whether these items were exempt under section 144.030.3(4), RSMo from sales and use tax as "machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating." The commission found that while Missouri has adopted the integrated plant theory, it is apparent from the statute limiting language that not all items used in the manufacture of a product are exempt from sales or use tax.*

With respect to the oil and antifreeze the commission found, first of all, that it did not qualify as a device and thus could not be considered equipment and machinery. It also found that the oil and antifreeze, though used in the start up of equipment, was not solely required for installation and construction. It continued to be used in the machinery after start up and, therefore, it was not exempt as supplies used solely for installation or construction of such machinery or equipment.

With respect to the concrete that was used to construct duct banks protecting the electrical system and manhole covers for access to the electrical system, the court found that the decision in ***Noranda Aluminum*** *was not controlling, because in that case the materials in question were used to construct duct banks which prevented the spillage of molten aluminum. Because the cement in question was not used to protect the electrical system from the manufacturing process itself, it was found not to be an integral part of that manufacturing process. Therefore, the concrete was not exempt from sales or use tax.*

With respect to the step-up transformer, the court found that it had two functions. It had a nonexempt function controlling the transmission of electricity to customers. The commission relied on New York law to the effect that the generation of voltage is manufacturing, the transmission of voltage is not. However, several times a year the transformer was used to start a generator which manufactures electricity. On those occasions the transformer was used in the manufacturing process. Therefore, the transformer is exempt from sales tax or use tax, because section 144.030.3(4), RSMo does not require that machinery be used exclusively or even primarily for manufacturing to qualify for exemption.

12 CSR 10-3.327 Exempt Machinery
(Rescinded January 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Aug. 6, 1980, effective Jan. 1, 1981. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.

Wendy's of Mid-Missouri, Inc. v. Department of Revenue*, Case No. RS-79-0222 (A.H.C. 7/22/82). Machinery and equipment used in fast food restaurants are not entitled to section 144.030.2(4), RSMo exemption because fast food restaurants do not constitute manufacturing plants.*

Jackson Excavating v. Administrative Hearing Commission*, 646 SW2d 48 (Mo. banc 1983). Machinery used to purify water for human consumption is exempt from sales or use tax as machinery used to establish a new or to expand an existing manufacturing plant. The court stated the purifications of water is "a transformation of raw material by the use of machinery, labor and skill into a product for sale which has an intrinsic and merchantable value in a form suitable for new uses."*

12 CSR 10-3.328 Contractor Conditions
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-40 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.330 Realty

PURPOSE: This rule interprets the sales tax law as it applies to sales of tangible personal property for incorporation into realty and interprets and applies section 144.010, RSMo.

(1) Sales tax does not apply to the sale of realty or an interest in realty. Nor does it apply to fixtures or improvements to realty where title does not pass until after the property has been attached to and become commingled with and part of the realty.

(2) Example: A cabinet maker is not subject to sales tax for the moneys received under a contract where s/he constructs and installs kitchen cabinets in a home under construction.

(3) Persons selling tangible personal property to construction contractors, general or prime contractors, subcontractors or special contractors for incorporation into realty, are subject to the sales tax on the gross receipts from all these sales.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 18 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-41 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

State ex rel. Otis Elevator Co. v. Smith*, 212 SW2d 580 (Mo. banc 1948). Otis Elevator Company was in the business of designing, constructing, installing and repairing elevators in buildings. Respondent claimed there was no sales tax due to petitioner Smith because the materials used to construct new elevators or to modify existing elevators lost their character or status as tangible personal property and became a part of the real property coincidently with their delivery and attachment to the building. Respondent kept a title retention clause in his contract with the building contractor allowing him to retain title to the elevator until he was paid in full and if not, to remove the elevator. Judge Ellison held this clause prevented the tangible personal property from being joined with the realty. Absent this contractual clause, the court would have reached a different conclusion.*

Where the contract for installation of new elevators, and reconstruction or major repairs to existing elevators whereby elevator company retains title to materials until paid, the elevator company is liable for sales tax. Had the contract not contained the title retentions clause the elevator company would not be liable for sales tax.

Where elevator company does repair work on existing elevators and supplies small parts which become part of the elevator, and does not retain title to the parts, the company is not subject to sales tax. The parts become part of the realty (see ***Air Comfort Service, Inc. v. Director of Revenue****, Case No. RS-83-1982 (A.H.C. 4/25/84) and* ***Marsh v. Spradling****, 537 SW2d 402 (Mo. banc 1976)).*

Op. Atty. Gen. No. 85, Stapleton (1-15-58). *Where contractor purchases tangible personal property from subcontractor or materialman, sales tax must be paid.*

***Builders Glass & Products Co. v. Director of Revenue**, Case No. RS-85-0453 (A.H.C. 5/13/87). The assessments at issue dealt with transactions between Builders Glass & Products and various sales tax exempt religious and charitable organizations. The Administrative Hearing Commission found that the petitioner as a contractor should have paid sales tax on its purchases of supplies and materials used in completing its contracts. Therefore, the Department of Revenue did properly impose tax upon the purchase by petitioner of materials used and consumed by it as a contractor and the tax was properly collectable directly from the taxpayer who had purchased the materials under an improper claim of exemption.*

12 CSR 10-3.332 United States Government Suppliers

PURPOSE: This rule provides when products sold to the United States government will be exempt from sales tax and interprets and applies sections 144.010 and 144.030.2(6), RSMo.

(1) Tangible personal property which is used exclusively in the manufacturing, processing, modification or assembling of products sold to the United States government or any of its agencies is tax exempt.

(2) Property which is not used exclusively but only partially and not wholly for manufacturing, processing, modification or assembling of products sold to the United States government or its agencies, is subject to the sales tax. Persons selling property used in the accounting and managerial functions by a person manufacturing, processing, modifying or assembling a product sold to the United States government or to any of its agencies are subject to the sales tax on the gross receipts from all these sales.

(3) Example: A-Plus Manufacturing Company manufactures and assembles aircraft for the United States government, foreign governments and major airlines. A-Plus is not entitled to exemption on its general manufacturing equipment, tools and the like, but only on the tangible personal property used solely and exclusively in manufacturing and assembling the aircraft sold to the United States government.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-42 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***State ex rel. Thompson-Stearns-Roger v. Schaffner**, 489 SW2d 207 (1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.*

12 CSR 10-3.333 Cities or Counties May Impose Sales Tax on Domestic Utilities

PURPOSE: This rule interprets the sales tax law as it applies to local government agencies imposing sales tax on domestic utilities and interprets and applies section 144.030, RSMo.

(1) A city or county local sales tax which was in effect prior to January 1, 1980 applies to domestic utilities until rescinded by ordinance.

(2) A city or county local sales tax which was in effect on or after January 1, 1980, by ordinance, may impose a local sales tax upon all sales of metered water service, electricity, electrical current and natural, artificial or propane gas, wood, coal or home heating oil for domestic use. The ordinance must be submitted to the director of revenue by United States registered mail or certified mail.

(3) The tax will be administered and become effective in the same manner as any other city or county sales tax as provided by sections 66.600–66.635, 67.500–67.545 and 94.500–94.570, RSMo (see *Laclede Gas Company v. City of Woodson Terrace*, 622 SW2d 315 (Mo. App. 1981)).

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

***Richard A. King v. Laclede Gas Co.**, 648 SW2d 113 (Mo. banc 1983). The director of revenue appealed from the decision of the Administrative Hearing Commission which held that the electricity which taxpayer used to operate its storage facility for natural gas and liquid propane was exempt from sales tax on the grounds that it was being used in a noncommercial, nondomestic, nonindustrial manner. The commission relied on the decision in **State ex rel. Kansas City Power and Light Co. v. Smith**, 111 SW2d 513 (1938) to find that the electricity in question was being used in internal operations and was thus noncommercial. The court chose to broaden the definition of commercial as it is used in section 144.020, RSMo to include those activities which are an integral part of the commercial activities of the taxpayer. Thus, the electricity used to operate the storage facilities was taxable because it was an integral part of the taxpayer's commercial utility operation. The court overruled the **Smith** case, but only insofar as it conflicts with the holding in the case at hand.*

12 CSR 10-3.334 Breeding Defined
(Rescinded December 11, 1980)

AUTHORITY: section 144.279, RSMo 1978. S.T. regulation 030-43 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.336 Animals Purchased for Feeding or Breeding Purposes

PURPOSE: This rule covers the tax treatment of animals for feeding or breeding purposes and interprets and applies sections 144.010, 144.020 and 144.030.2(22), RSMo.

(1) Sales tax does not apply to the sale of animals for breeding or feeding purposes. Unlike the exemptions for feed and feed additives which are limited to livestock or poultry, the exemption mentioned in this rule applies to all animals.

(2) Persons selling animals to purchasers for the purchaser's personal enjoyment or use, without the intent to use or resell these animals or their offspring in the regular course of a business, are subject to the sales tax although the animals would mate with other animals and of necessity would have to be fed. Sales of animals which are for breeding or feeding purposes, which breeding or feeding is carried on as part of a business enterprise, are not subject to the sales tax. Persons selling animals to purchasers for consumption or for the purpose of giving the animals to another or allowing another gratuitously to use, are subject to the sales tax on the gross receipts from all these sales.