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

Title	Page
12 CSR 10-110.013 Drugs and Medical Equipment	3
12 CSR 10-110.016 Refunds and Credits	5
12 CSR 10-110.220 Hotels and Motels	6
12 CSR 10-110.900 Farm Machinery and Equipment Exemptions.....	6
12 CSR 10-110.910 Livestock	9
12 CSR 10-110.920 Sales of Grains, Seed, Pesticides, Herbicides and Fertilizers	9

**Title 12—DEPARTMENT OF
REVENUE**

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

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

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

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

(2) Definition of Terms.

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

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

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

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

(3) Basic Application of Tax.

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

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

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

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

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

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

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

(4) Examples.

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

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

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

(B) Examples of exempt prosthetic devices include:

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

(C) Examples of exempt orthopedic devices include:

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

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

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

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

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

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

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

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

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

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

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

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

12 CSR 10-110.016 Refunds and Credits

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

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

(2) Basic Application of Tax.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Examples.

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

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

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

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

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

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

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

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

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

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

12 CSR 10-110.220 Hotels and Motels

PURPOSE: This rule explains the taxability of rooms, meals and drinks provided by hotels, motels, and similar establishments in which these items are regularly provided to the public. It also covers purchases made by these establishments. The applicable sections are 144.010, 144.011, 144.020, 144.021, 144.030 and 144.080, RSMo.

(1) In general, sales or charges for rooms, meals or drinks at a place that regularly serves the public are taxable.

(2) Definitions. Permanent resident—An individual who contracts in advance for a room for a period of thirty consecutive days or more and who actually remains a guest for thirty consecutive days or more. Businesses do not qualify as permanent residents.

(3) Basic Application of the Tax.

(A) Charges for rooms, meals, and drinks furnished by hotels, restaurants, and other establishments, in which rooms, meals, or drinks are regularly served to the public, are taxable. Rooms for lodging as well as meet-

ing, banquet and conference rooms are taxable.

(B) A permanent resident is not subject to tax on their lease or rental payments. A permanent reservation for any room is not synonymous with permanent resident.

(C) An educational institution, which furnishes room and board to students in pursuit of their educational objectives, is not subject to tax on the gross receipts.

(D) Persons engaged in providing rooms are subject to tax on the gross receipts from the sale of tangible personal property and taxable services:

1. Receipts for food or drink are taxable regardless of whether the charge is made per meal, daily, weekly, or monthly;

2. In room pay-per-view programs or movies are not subject to tax; and

3. All persons engaged in providing rooms must collect tax on all charges for telecommunication services, including intrastate and interstate calls.

(E) Rooms, meals and drinks are exempt from tax if sold to an exempt organization or a representative of that organization if the seller has documentation of the exemption. If the representative claims the exemption, even if the representative pays with his own funds and is reimbursed, and the hotel has a copy of a valid exemption letter issued by the Missouri Department of Revenue to the organization, the sale is exempt. An agent of the United States government paying with a U.S. government credit card is also exempt.

(F) Persons providing complimentary meals and drinks or non-reusable tangible personal property as part of the room accommodation should not pay tax on the purchases. Non-reusable items include soap, shampoo, tissue, and food or confectionery items offered to the guests without charge.

(G) The purchaser must pay tax on the purchase of reusable items including furniture, curtains, linens, towels, pillows, mirrors, radios and televisions for room accommodation.

(4) Examples.

(A) A hotel rents a room to a guest for a night. The soap and shampoo are included in the price of the room and may be purchased tax exempt by the hotel under a resale exemption. The complimentary breakfast provided to the guest is also included in the price of the room, and the hotel may purchase the food under a resale exemption. The towels, bed linens and furniture are subject to tax at the time of purchase.

(B) A hotel provides a complimentary room for a couple's wedding night. The hotel includes a free bottle of champagne and a free

breakfast. The hotel must pay tax on the cost of the champagne and the breakfast because the hotel did not charge for the room.

(C) An airline reserves rooms at a hotel under a long-term room contract. In exchange for room availability, the airline agrees to pay for all rooms on a guaranteed basis, whether or not it uses the rooms. The entire charge for the rooms is taxable, regardless of whether the rooms are actually used.

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

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

12 CSR 10-110.900 Farm Machinery and Equipment Exemptions

PURPOSE: Sections 144.030.2(22), 144.045.1 and 144.047, RSMo, exempt certain farm machinery, equipment, repair parts and lubricants from taxation. This rule explains which items qualify for these exemptions.

(1) In general, the purchase of farm machinery, equipment, repair parts and supplies used exclusively and directly for producing crops, raising and feeding livestock, fish or poultry or producing milk for ultimate sale at retail is exempt from tax.

(2) Definition of Terms.

(A) Farm machinery—Machinery and equipment used directly and exclusively in the agricultural production process.

(B) Repair and replacement parts—Items of tangible personal property that are components of exempt farm machinery and equipment. 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.

(3) Basic Application of Exemption.

(A) To qualify for exemption pursuant to section 144.030.2(22), RSMo, items purchased must be—

1. Used exclusively for agricultural purposes;

2. Used on land owned or leased for the purpose of producing farm products;

3. Used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail. The term "used directly" encompasses items that are used in some manner prior to the

actual commencement of production, during production, or in some manner after the production has terminated. In determining whether items are used directly, consideration must be given to the following factors:

A. Where the items in question are used;

B. When the items in question are used; and

C. How the items in question are used to produce a farm product; and

4. Farm machinery or equipment that meet these requirements are exempt from tax, as are repair or replacement parts thereon and lubricants used exclusively for such farm machinery or equipment and one-half (1/2) of any diesel fuel used in such machinery or equipment.

(B) Pursuant to section 144.045.1, RSMo, farm 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 attached to a vehicle or real property. Such equipment includes, but is not limited to, a grinder mixer mounted on a vehicle or special livestock flooring. When exempt farm machinery or equipment attached to a motor vehicle is sold with the motor vehicle, the part of the total sales price attributable to the farm machinery or equipment is exempt from tax if the farm machinery or equipment is separately invoiced.

(C) Pursuant to section 144.047, RSMo, farm machinery includes aircraft used solely for aerial application of agricultural chemicals.

(D) Pursuant to section 144.030.2(34), RSMo, all sales of grain bins for storage of grain for resale are exempt; however, parts purchased separately for these bins are not exempt. Grain bins and all parts purchased that qualify as farm machinery and equipment are exempt.

(E) The fact that particular items may be considered to be essential or necessary will not automatically entitle them to exemption. The following categories of items are excluded from the meaning of the term farm machinery and farm equipment and are subject to tax:

1. Under no circumstances can a motor vehicle or trailer ever be treated as tax exempt farm machinery. The terms motor vehicle and trailer are defined by the titling and licensing laws of Missouri (Chapter 301);

2. Containers and storage devices such as oil and gas storage tanks, pails, buckets and cans;

3. Hand tools and hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks, shovels, brooms, wrenches, pliers and grease guns;

4. Consumable items such as antifreeze, freon, ether, and starter fluid;

5. Attachments and accessories not essential to the operation of the machinery itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air-conditioning units, cabs, deluxe seats, tool or utility boxes and lubricators;

6. Equipment used in farm management such as communications and office equipment, repair, service, security or fire protection equipment;

7. Drainage tile, fencing material, building materials, general heating, lighting and ventilation equipment for nonproduction areas; and

8. Machinery and equipment used for a dual purpose, one purpose being agricultural and the other being nonagricultural are not exempt.

(F) 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 producing farm products and used directly in producing farm products or livestock to be sold ultimately at retail.

Schedule A Usually Exempt Items

Artificial insemination equipment

Augers

Bale loader

Bale transportation equipment

Baler twine

Baler wire

Balers

Batteries for farm machinery and equipment

Bedding used in production of livestock or poultry for food or fiber

Binder twine

Binders

Brooders

Bulk feed storage tanks

Bulk milk coolers

Bulk milk tanks

Bulldozers used exclusively in agricultural production

Calcium for tires

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 bins for storage of grain for resale (but not separately billed parts or add-ons to these grain bins)

Grain binders

Grain conveyors

Grain drills

Grain elevators, portable

Grain handling equipment

Grain planters

Greases and oils

Harrow (including spring-tooth harrow)

Hay loaders

Head gates

Heaters, livestock and poultry

Hog feeders, portable

Hoists, farm

Husking machines

Hydraulic fluid

Hydro-coolers

Incubators

Irrigation equipment

Livestock feeding, watering and handling equipment

Lubricating oils and grease

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 (not truck scales)
 Seed cleaners
 Seed planters
 Seeders
 Shellers
 Silo unloaders
 Sorters
 Sowers
 Sprayers
 Spreaders
 Sprinkler systems, livestock and poultry
 Squeeze chutes
 Subsoiler
 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

(G) Schedule B is a list of items, which are usually taxable.

**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
 Ether
 Fence building tools
 Fence posts
 Field toilets
 Fire prevention equipment
 Freon
 Fuel additives
 Garden hose
 Garden rakes and hoes
 Gasoline tanks and pumps
 Golf carts
 Hammers
 Hand tools
 Hog ringers
 Hog rings
 Lamps
 Lanterns
 Lawnmowers
 Light bulbs
 Marking chalk
 Nails
 Office supplies and equipment
 Packing room supplies
 Paint and decals
 Personal property installed in or used in housing for farm workers
 Posthole 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
 Starting fluids
 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

(4) Examples.

(A) An implement dealer sells a soilmoover to a farmer. The soilmoover is going to be used on low-lying agricultural land exclusively for the purpose of controlling drainage. The sale of the soilmoover is exempt.

(B) A farmer purchases a combine. The farmer later purchases an AM/FM radio to be installed on the combine. The farmer's purchase of the combine is exempt; however, the farmer's purchase of the AM/FM radio is taxable. If the radio had been a part of the assembled unit, the total price for the combine would have been exempt.

(C) A farmer purchases a lawnmower. The farmer uses the lawnmower to mow around grain bins, as well as mow his lawn. The purchase of the lawnmower is subject to tax, since the lawnmower is not used exclusively and directly for agricultural production.

(D) A farmer purchases a water chiller for use to control the climate inside the hatchers and setters. The water chiller is also used to cool the administrative areas in the hatchery. The purchase of the water chiller is subject to tax, since it is not used exclusively for agricultural production.

(E) A farmer takes his tractor to the implement dealer for routine maintenance, which includes changing the oil, filters and antifreeze. The sale of the oil and filters would be exempt; however, the antifreeze would be subject to tax.

(F) A farmer buys a bale spike to be installed on his pickup truck. The bale spike is not subject to tax.

(G) A farm supply store sells commercial rabbitry equipment, such as feeders, nest boxes and wire hanging cages used for rabbit cages and feeders, to a farmer who raises rabbits in confinement for human consumption. These items are not subject to tax.

AUTHORITY: sections 144.270 and 144.705, RSMo, 1994. Original rule filed Nov. 18, 1999, effective June 30, 2000.*

**Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961; and 144.705, RSMo 1959.*

Charles A. Johnson, Jr. v. Director of Revenue (AHC 1986). A seed cleaner was purchased under a claim of exception to process soybeans. The Commission ruled that although the taxpayer bought the seed cleaner to process his own soybeans, he used the equipment to process other farmers' seed as well. Processing the seed of others failed to meet the requirement that the equipment be used directly and exclusively for the production of farm products.

Crystal Lake Fisheries v. Director of Revenue (AHC 1989). A nearby creek could flood raceways used to raise rainbow trout. A dike prevents the creek from flooding the raceways. A bulldozer was purchased, which was used to repair and maintain the dike. The bulldozer is also used to prevent flooding of pasture, hay, and land containing hardwood and softwood trees, all of which are harvested as required. The court found that the bulldozer in question met the three requirements of the exemption statute. The bulldozer was used exclusively for agricultural purposes, on land owned or leased for the purpose of farming, and directly in producing farm products.

12 CSR 10-110.910 Livestock

PURPOSE: Sections 144.030.2(1), 144.030.2(7), 144.030.2(22), 144.030.2(29) and 144.030.2(32), RSMo, exempt from taxation certain livestock, feed and feed additives, medicines and vaccines, and pesticides and herbicides. This rule explains the requirements that must be met to qualify for these exemptions.

(1) In general, the sale of livestock, animals or poultry used for breeding or feeding purposes, feed for livestock or poultry, feed additives, medications or vaccines administered to livestock or poultry in the production of food or fiber, and sales of pesticides and herbicides used in the production of aquaculture, livestock or poultry are exempt from tax.

(2) Definition of Term.

(A) Aquaculture—The controlled propagation, growth and harvest of aquatic organisms as defined in section 277.024, RSMo.

(B) Commercial breeder—A person, other than a hobby or show breeder, engaged in the business of breeding animals for sale or exchange in return for consideration and who harbors more than three (3) intact females for the primary purpose of breeding animals for sale.

(C) Feed—Food essential for growth, fattening or nourishment of livestock or poultry.

(D) Feed additives—Tangible personal property, including medicine or medical additives added to feed.

(E) Livestock—Cattle, calves, sheep, swine, ratite birds, including but not limited to, ostrich and emu, aquatic products as defined in section 277.024, RSMo, elk documented as obtained from a legal source and not from the wild, goats, horses, other equine, or rabbits raised in confinement for human consumption.

(F) Poultry—Any domesticated bird, such as adult or baby chickens, turkeys, ducks, guinea fowl or geese.

(3) Basic Application of Exemptions.

(A) Pursuant to section 144.030.2(1), RSMo, sales of feed for livestock or poultry are not subject to tax.

(B) Pursuant to section 144.030.2(22), RSMo, sales of feed additives, medications or vaccines administered to livestock or poultry in the production of food or fiber, and sales of pesticides used in the production of livestock or poultry for food or fiber are not subject to tax. Examples include hormones, digestive aids, antibiotics, hog wormers, tonics, medical preparations.

(C) Pursuant to section 144.030.2(7), RSMo, sales of animals used for breeding or feeding purposes are exempt. Unlike the exemptions for feed and feed additives, which are limited to livestock or poultry, this exemption applies to all animals.

(D) Pursuant to section 144.030.2(22), RSMo, sales of bedding used in the production of livestock or poultry for food or fiber are exempt. Examples of bedding may include, but are not limited to, wood shavings, straw and shredded paper.

(E) Pursuant to section 144.030.2(29), RSMo, livestock sales are exempt when the seller is engaged either in the growing, producing or feeding of such livestock, or in the business of buying and selling, bartering or leasing of such livestock.

(F) Pursuant to section 144.030.2(32), RSMo, sales of pesticides or herbicides used in the production of aquaculture, livestock or poultry are exempt.

(G) Pursuant to section 144.030.2(35), RSMo, sales of feed which are developed for and used in the feeding of pets owned by a commercial breeder when such sales are made to a commercial breeder, licensed pursuant to sections 273.325 to 273.357, RSMo are exempt.

(H) Sales of poultry to persons to produce eggs for the sole purpose of the person's consumption are subject to tax.

(I) Sellers of poultry are not subject to tax when—

1. The poultry is sold for breeding purposes; or

2. The poultry is sold to persons who raise the poultry for subsequent sale in dressed or processed form; or

3. The poultry is used to produce eggs to be ultimately sold in processed form or otherwise at retail; or

4. The poultry are purchased for resale.

(J) Sales of animals for the purchaser's personal enjoyment or use only, are subject to

tax. Sales of animals for breeding or feeding purposes as part of a business enterprise are not subject to tax.

(4) Examples.

(A) An individual purchases feed, nonprescription vaccines, and bedding for show horses. The purchase of the feed is not subject to tax, however the purchase of the vaccines and the bedding is subject to tax.

(B) A farmer purchases feed, vaccines and bedding for use in his swine operation. The purchases of the feed, vaccines and bedding are exempt.

(C) A rancher breeds and sells horses. The sales of the horses are not subject to tax.

(D) A rabbit farmer raises rabbits, which are sold for processing as food for human consumption. Feed for the rabbits is not subject to tax because rabbits raised in confinement for human consumption are livestock.

(E) A person sells feed to a pet shop which raises and sells rabbits to the general public as pets. The sale of the feed is subject to tax.

(F) A fish farmer purchases fish for use in his aquacultural operation. The purchase of the fish is exempt from tax.

(G) An individual decides to construct and stock a lake on his farm for recreational fishing by his family, neighbors and friends. The purchase of the fish is subject to tax.

(H) A breeder of parakeets purchases feed for breeding stock. The bird feed is subject to tax, because a parakeet breeder does not fit the definition of a commercial breeder.

AUTHORITY: section 144.270, RSMo 1994.* Original rule filed Jan. 3, 2000, effective July 30, 2000.

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

12 CSR 10-110.920 Sales of Grains, Seed, Pesticides, Herbicides and Fertilizers

PURPOSE: Sections 144.030.2(1), (22), and (32), RSMo, exempt the sales of certain grains, seed, pesticides, limestone, fertilizer and herbicides. This rule explains the requirements that must be met in order to qualify for these exemptions. Section 144.020.1(3), RSMo, taxes certain utility services. This rule explains the application of this taxing provision for sales to agricultural consumers.

(1) In general, the sale of grains to be converted into foodstuffs or seed, and limestone, fertilizer, and herbicides used in connection with the growth or production of crops, livestock or poultry is exempt from tax.



(2) Definition of Terms.

(A) Herbicides—Chemical substances used to destroy or inhibit the growth of plants, especially weeds.

(B) Livestock—See 12 CSR 10-110.900.

(C) Pesticides—Chemicals used to kill pests, especially insects. Pesticides include adjuvants such as crop oils, surfactants, wetting agents and other pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark the application of pesticides and herbicides for the production of crops, livestock or poultry.

(3) Basic Application of Tax.

(A) The sale of grain to be converted into foodstuffs ultimately sold in processed form at retail is exempt.

(B) The sale of seed, lime or fertilizer used in producing crops that will be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at retail is exempt.

(C) Sales of pesticides or herbicides used in the production of crops, orchards, aquaculture, livestock or poultry are exempt.

(D) Seed, pesticides and fertilizers sold for nonagricultural use are subject to tax. Sales of fertilizer for lawns, shrubbery and similar ornamental uses and seeds for ornamental purposes are examples of sales subject to tax.

(E) The sale of electricity, water, and gas used for agricultural production is exempt.

(4) Examples.

(A) A pesticide dealer sells pesticides to an orchard to spray on the fruit trees to kill insects. The sale of the pesticide is not subject to tax.

(B) An agricultural chemical dealer sells foam marker to a farmer to aid in determining where herbicides have been sprayed on crops. The sale of the foam marker is not subject to tax.

(C) A seed dealer sells seed, pesticides and fertilizer to a construction company for use on a construction site. These sales are subject to tax.

(D) A pesticide dealer sells fly spray for dairy cattle and rat and mouse poison for use in the dairy barn. The sale of the fly spray is not subject to tax. The sale of the rat and mouse poison is not subject to tax because it is used in the production of an agriculture product.

Conagra Poultry Co. v. Director of Revenue, 862 S.W.2d 915 (Mo. banc 1993). Wood shavings were sold by the taxpayer, a turkey processor, to its contractors as part of the contractors' compensation for raising the turkeys. The contractors expected to use as fertilizer all the litter that the turkey-raising operation would produce in their own farming. The court ruled that at the time the wood shavings passed to the contractors, the wood shavings had no value as fertilizer. The wood shaving become fertilizer upon absorbing nutrients in the turkey droppings. The wood shavings were not exempt as materials used in processing because even though the wood shavings became a component part of the fertilizer, the contractors used the fertilizer for their own farming and did not sell any products for final use or consumption.

Norwin G. Heimos Greenhouse, Inc. v. Director of Revenue, 724 S.W.2d 505 (Mo. banc 1987). Gas, water and electricity were used for the operation of greenhouses. A refund was requested on tax paid on utilities used in the greenhouse's production of flower and vegetable plants for sale to retailers. The court found that the greenhouse's use of utilities constituted agricultural consumption and was not subject to sales tax under Section 144.020.1(3), RSMo. The legislatures distinguished between agricultural and commercial in the property tax statutes and the Employment Security Law. The court concluded that the legislature also intended that agricultural consumers be considered as a class separate from commercial consumers for sales tax purposes.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 3, 2000, effective July 30, 2000.*

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