



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: 144.270, RSMo 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(Rescinded January 30, 2000)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 Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.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

(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

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

(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

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

(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

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12 CSR 10-3.007 Partial Liquidation of Trade or Business

(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994.* Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.008 Manufacturers and Wholesalers

(Rescinded October 30, 2002)

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. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

**12 CSR 10-3.010 Fireworks and Other Seasonal Businesses**

(Rescinded May 30, 2003)

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. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

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, 1993, 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, deposit-

ed 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 acknowledgment 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)
<hr/> Ticket price	<hr/> \$(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: 144.270, RSMo 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: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.020 Finance Charges (Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

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 (Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.023 Rebates (Rescinded September 30, 2001)

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.

Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.024 Returned Goods (Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

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 (Rescinded March 30, 2001)

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. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

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 coincidentally 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 was 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 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.

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
(Rescinded March 30, 2001)

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. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

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
(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 15, 1985, effective March 24, 1986. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

12 CSR 10-3.032 Fabrication or Processing of Tangible Personal Property
(Rescinded March 30, 2001)

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. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.034 Modular or Sectional Homes
(Rescinded October 30, 2002)

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. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

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 coincidentally 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
(Rescinded December 30, 2003)

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. Rescinded: Filed June 30, 2003, effective Dec. 30, 2003.

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
(Rescinded May 30, 2003)

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. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

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. 24 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 (Rescinded October 30, 2002)

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. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

12 CSR 10-3.044 Labor or Services Rendered (Rescinded October 30, 2002)

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. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

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 non-taxable 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 (Rescinded December 30, 2003)

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. Rescinded: Filed June 30, 2003, effective Dec. 30, 2003.

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 (Rescinded May 30, 2003)

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. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

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

12 CSR 10-3.052 Sale of Ice (Rescinded February 28, 2011)

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. Rescinded: Filed Aug. 30, 2010, effective Feb. 28, 2011.

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, com-

pounding, 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 (Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

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 (Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

**12 CSR 10-3.060 Memorial Stones**
(Rescinded: September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

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
(Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.064 Maintenance or Service Contracts With Parts
(Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.066 Delivery, Freight and Transportation Charges—Sales Tax
(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

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, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.070 Service-Oriented Industries
(Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

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
(Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.074 Garages, Body and Automotive Shops and Service Stations
(Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.076 Used Car Dealers
(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.078 Laundries and Dry Cleaners
(Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

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
(Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.082 Furniture Repairers and Upholsterers
(Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.084 Fur and Garment Repairers
(Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.086 Bookbinders, Paper-cutters, Etc.
(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

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, Photo-finishers and Photoengravers
(Rescinded May 30, 2003)

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. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

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
(Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.092 Painters
(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.094 Interior or Exterior Decorators
(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.096 Janitorial Services
(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.098 Drugs and Medicines
(Rescinded October 30, 2000)

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. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

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
(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.102 Sheet Metal, Iron and Cabinet Works
(Rescinded March 30, 2001)

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. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

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 coincidentally 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
(Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

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 advertis-

ing 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
(Rescinded October 30, 2002)

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. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

12 CSR 10-3.118 Leased Departments or Space
(Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

12 CSR 10-3.120 Food Stamps and W.I.C. (Women, Infants and Children) Vouchers
(Rescinded December 30, 2003)

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. Rescinded: Filed June 30, 2003, effective Dec. 30, 2003.

12 CSR 10-3.122 Consideration Other Than Money, Except for Trade-Ins
(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.124 Coins and Bullion
(Rescinded April 30, 2003)

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. Rescinded: Filed Oct. 15, 2002, effective April 30, 2003.

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
(Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

12 CSR 10-3.128 Salvage Companies
(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.130 Assignments and Bankruptcies
(Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

12 CSR 10-3.131 Change of State Sales Tax Rate
(Rescinded February 28, 2001)

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. Rescinded: Filed Aug. 24, 2000, effective Feb. 28, 2001.

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
(Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

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 10-3.136 Consideration Other Than Money

(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.138 Consideration Less Than Fair Market Value

(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.140 Interdepartmental Transfers

(Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

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 coupons 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: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.

12 CSR 10-3.144 Redemption of Coupons

(Rescinded October 30, 2002)

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. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

12 CSR 10-3.146 Core Deposits

(Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

12 CSR 10-3.148 When a Sale Consumes

(Rescinded May 30, 2003)

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. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

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

(Rescinded May 30, 2003)



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. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

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 (Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

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 veterinari-

ans 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 (Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

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
(Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

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
(Rescinded October 30, 2002)

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. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

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
(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.162 Pawnbrokers
(Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

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
(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.166 Seller of Boats
(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.167 Sales of Food and Beverages to and by Public Carriers
(Rescinded May 30, 2001)

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. Rescinded: Filed Nov. 9, 2000, effective May 30, 2001.

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: 144.270, RSMo 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

(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

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 coincidentally 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

(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

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

(Rescinded December 30, 2003)

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. Rescinded: Filed June 30, 2003, effective Dec. 30, 2003.

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
(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

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: 144.270, RSMo 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

(Rescinded February 29, 2008)

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. Rescinded: Filed Aug. 14, 2007, effective Feb. 29, 2008.

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

(Rescinded April 30, 2001)

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. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

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: 144.270, RSMo 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 (Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.



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 (Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

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 10-3.196 Nonreturnable Containers (Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

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

(Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

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

(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

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

(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

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 statuto-

ry 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

(Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

12 CSR 10-3.206 Bottle Caps and Crowns

(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

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

(Rescinded September 30, 2001)



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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

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
(Rescinded February 28, 2001)

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. Rescinded: Filed Aug. 24, 2000, effective Feb. 28, 2001.

12 CSR 10-3.212 Rooms, Meals and Drinks
(Rescinded March 30, 2001)

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. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.214 Complimentary Rooms, Meals and Drinks
(Rescinded March 30, 2001)

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. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.216 Permanent Resident Defined
(Rescinded March 30, 2001)

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. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

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
(Rescinded March 30, 2001)

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. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.220 Sales of Accommodations to Exempt Organizations
(Rescinded March 30, 2001)

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. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.222 Transportation Fares
(Rescinded May 30, 2003)

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. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

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**
(Rescinded May 30, 2003)

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. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

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
(Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

12 CSR 10-3.230 Repair Parts for Leased or Rented Equipment
(Rescinded May 30, 2003)

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. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

12 CSR 10-3.232 Maintenance Charges for Leased or Rented Equipment
(Rescinded May 30, 2003)

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. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

12 CSR 10-3.233 Export Sales
(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed April 1, 2002, effective Oct. 30, 2002.

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 reach-

ing 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
(Rescinded October 30, 2002)

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. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.



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

(Rescinded September 30, 2001)

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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.245 Exempt Federal, State Agency or Missouri Political Subdivision—General Requirements

(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 15, 1984, effective Feb. 11, 1985. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

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

(Rescinded October 30, 2002)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 15, 1984, effective Feb. 11, 1985. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

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

(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

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
(Rescinded September 30, 2010)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Feb. 26, 2010, effective Sept. 30, 2010.

12 CSR 10-3.250 Sales to Missouri
(Rescinded October 30, 2002)

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. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

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

12 CSR 10-3.254 Sales to Missouri Political Subdivisions
(Rescinded October 30, 2002)

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. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

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
(Rescinded October 30, 2002)

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. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

12 CSR 10-3.258 Petty Cash Funds
(Rescinded October 30, 2002)

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. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

12 CSR 10-3.260 Nonappropriated Activities of Military Services
(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

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

(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

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

(Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

12 CSR 10-3.266 Sales to National Banks and Other Financial Institutions

(Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

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

(Rescinded May 30, 2003)

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. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

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: 144.270, RSMo 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

(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

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 soilmoovers were farm machinery within the meaning of the statute. The soilmoover 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 pro-

duction of the crops is a direct relationship. Therefore, the Administrative Hearing Commission concluded that the soilmoovers 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

(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.280 Sale of Agricultural Products by the Producer

(Rescinded October 30, 2001)

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. Rescinded: Filed April 5, 2001, effective Oct. 30, 2001.

12 CSR 10-3.282 Sales of Seed, Pesticides and Fertilizers

(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.284 Poultry Defined

(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

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

(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

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

(Rescinded January 30, 2011)

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. Rescinded: Filed July 30, 2010, effective Jan. 30, 2011.

12 CSR 10-3.290 Sellers of Poultry

(Rescinded November 30, 2000)

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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

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 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.

12 CSR 10-3.292 Ingredients or Component Parts

(Rescinded October 30, 2002)

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. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

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 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.

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 (Rescinded October 30, 2002)

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. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

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 144.010.1(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 chem-

icals 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 (Rescinded October 30, 2002)

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. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

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
(Rescinded May 30, 2003)

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. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

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 be 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.

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 (Rescinded February 28, 2011)

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. Re filed March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Aug. 16, 2010, effective Feb. 28, 2011.

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 coincidentally 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 (Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-42 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Re filed March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

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 (Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Aug. 16, 2010, effective Feb. 28, 2011.

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
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-44 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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

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 general issues raised by petitioner were whether or not it was subject to sales and use tax on its purchases of birds and animals for display in its wild animal park; subject to sales tax on the purchase of feed for those animals; and subject to sales tax on the subsequent resale of those animals, after they had been used by petitioner. The Administrative Hearing Commission ruled for the director on all points.

12 CSR 10-3.340 Newsprint
(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 030-45 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 S. 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 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.

12 CSR 10-3.342 Books, Magazines and Periodicals
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 72 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-46 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1982.

12 CSR 10-3.344 Newspaper Sales
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 72 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-47 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.346 Printing Equipment
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 71 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-48 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.348 Printers
(Rescinded May 30, 2003)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 71 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-49 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 Nov. 15, 2002, effective May 30, 2003.

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 10-3.350 Movies, Records and Soundtracks
(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-50 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 Aug. 16, 2010, effective Feb. 28, 2011.

Universal Images v. Missouri Department of Revenue, 608 SW2d 417 (Mo. banc 1980). Filmed commercials shown in theaters were subject to tax imposed on privilege of storing, using or consuming any article of tangible personal property within state, where taxpayer purchased films from out-of-state vendors and they remained property of taxpayer and were stored in state during their useful life during which taxpayer charged advertisers fee for use of films; but charges for out-of-state laboratory services which were not incidental to production of film were not subject to the tax.

12 CSR 10-3.352 Recording Devices
(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994.



S.T. regulation 030-51 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 Aug. 16, 2010, effective Feb. 28, 2011.

12 CSR 10-3.354 Pipeline Pumping Equipment

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-52 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 Aug. 16, 2010, effective Feb. 28, 2011.

12 CSR 10-3.356 Railroad Rolling Stock

(Rescinded May 30, 2003)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-54 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 Nov. 15, 2002, effective May 30, 2003.

12 CSR 10-3.358 Electrical Energy

(Rescinded May 30, 2003)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 85 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-55 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 March 11, 1983, effective July 11, 1983. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

Terminal Warehouses of St. Joseph, Inc. v. Department of Revenue, Case No. RV-81-0426 (A.H.C. 8/10/83). The sole issue in this case is whether petitioner was entitled to an electrical energy exemption pursuant to section 144.030.2(12), RSMo for electrical energy used in the secondary processing of a product where the cost of the electrical energy used exceeds ten percent of the total cost of production. Petitioner was in the business of freezing and storing food. The commission found that freezing causes various changes in the chemical and physical properties of food, and that the purpose of freezing was to increase the product's longevity and preserve its nutritional value. The commission held that the taxpayer need not qualify as a manufacturer before it was entitled to claim an exemption for processing and that the freezing

of food constitutes processing. Therefore, the taxpayer is entitled to the exemption.

*St. Louis County Water Company v. Director of Revenue, Case Nos. RS-84-0307, RS-85-0444 and RS-84-0514 (A.H.C. 6/30/86). The Administrative Hearing Commission found that the petitioner qualified for the manufacturing exemption under 144.030.2(12), RSMo. In *Jackson Excavating v. Administrative Hearing Commission*, 646 SW2d 48 (Mo. 1983), the supreme court stated the test for manufacturing: a transformation of a raw material into a salable new product which has an intrinsic and merchantable value in a form capable of new uses. The commission noted that pressurization was necessary to maintain purification: both the Missouri Public Service Commission and the Department of Natural Resources require minimum pressure to be maintained to meet consumer needs and to prevent contamination such as backflow and seepage. Further, the commission noted that the petitioner had to produce a product capable of performing work such as activating sprinklers, toilets and showers. The commission found that pressurization was "an integral continuous and indivisible portion of the petitioner's business" and part of the purification process constituting manufacturing.*

Monsanto Company v. Director of Revenue, Case No. RS-84-0332 (A.H.C. 11/29/86). The Administrative Hearing Commission disregarded the integrated plant argument and ruled that the formation of silicon rods was a separate and distinct manufacturing stage entitled to the exemption.

12 CSR 10-3.360 Electrical Energy Used in Manufacturing

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 85 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-56 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.362 Primary and Secondary Defined

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 85 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-57 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.364 Cost of Production Defined

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 85 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-58 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

State ex rel. Union Electric Co. v. Goldberg, 578 SW2d 921 (Mo. banc 1979). Section 144.030.3(11) exempts from state sales tax "electrical energy used in the actual primary manufacture, processing, compounding, mining or producing of a product or electrical energy used in the actual secondary processing or fabricating of the product, if the percent of the total cost of production, either primary or secondary, exclusive of the cost of electrical energy so used." Appellant mining company sought a refund of taxes paid on electrical energy purchased for use in its beneficiation process. Although the cost of the electrical energy used in the beneficiation did exceed ten percent of the total cost of that process, the total cost of electrical energy used in the combined operations of mining and processing did not exceed ten percent of the total cost of production. Held, the exemption may apply to individual processes and beneficiation is a "process" in contemplation of the statute. Since the cost of electrical energy used during that process exceeded ten percent of the total cost of that process, the electrical energy used during beneficiation is exempt from state sales tax.

12 CSR 10-3.366 Authorization Required

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 85 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-59 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 1, 1980.

12 CSR 10-3.368 Air Pollution Equipment

PURPOSE: This rule interprets the sales tax law as it applies to air pollution equipment.

(1) All machinery, equipment, appliances and devices used solely for preventing, abating or monitoring air pollution and all materials and supplies solely required for the installation, construction or reconstruction of the machinery, equipment, appliances or devices are exempt, provided that the items are so certified by the director of the Department of Natural Resources (DNR).



(2) Example. A so-called scrubber device that washes and removes undesirable particles, purchased by a poultry processing plant for the purpose of reducing odors and consequently, abating air pollution and so certified by the director of DNR would not be subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 030-60 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: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.

12 CSR 10-3.370 Water Pollution

PURPOSE: This rule interprets the sales tax law as it applies to water pollution equipment.

(1) All machinery, equipment, appliances and devices used solely for preventing, abating or monitoring water pollution and all materials and supplies solely required for the installation, construction or reconstruction of the machinery, equipment, appliances or devices are exempt, provided that the items are so certified by the director of the Department of Natural Resources.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 030-61 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: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.

12 CSR 10-3.372 Water or Air Pollution Installation Contractor

(Rescinded May 30, 2003)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-62 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 Nov. 15, 2002, effective May 30, 2003.

12 CSR 10-3.374 Materials Not Exempt

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-63 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.376 Rural Water Districts

(Rescinded February 28, 2011)

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 030-64 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 Aug. 16, 2010, effective Feb. 28, 2011.

12 CSR 10-3.378 Defining Charitable

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978 S.T. regulation 040-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

World Plan Executive Counseling v. Director of Revenue, Case No. RS-79-0055 (A.H.C. 8/23/82). Taxpayer was not entitled to sales and use tax exemption for taxes associated with the construction of two transcendental meditation academies because its activities do not relieve government of the burden of providing a service which would otherwise be a governmental responsibility. Therefore, taxpayer is not a charitable organization pursuant to section 144.030.2(19), RSMo.

12 CSR 10-3.380 Operating at Public Expense

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 040-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.382 Sales Made to and by Exempt Organizations

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 4 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-3 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 Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Aug. 16, 2010, effective Feb. 28, 2011.

St. Louis Sheet Metal Joint Apprenticeship Fund v. Director of Revenue, Case No. RS-82-0424 (A.H.C. 11/16/83). A letter was issued to the petitioner, Apprenticeship Fund, by the director of revenue denying its request

for an exemption from the payment of sales and use tax. The director of revenue asserted that the commission had no jurisdiction to rule on the denial of the exemption because the denial did not constitute an appealable final decision. It was the director's position that until such time as an actual assessment had been issued against the petitioner, any order issued by the commission concerning petitioner's right to an exemption would constitute a declaratory judgment, which is beyond the jurisdiction of this state's quasi-judicial bodies according to the decision in *State Tax Commission v. Administrative Hearing Commission*, 641 SW2d 69 (Mo. banc 1982). The commission rejected this argument on the grounds that the issuance of the letter denying the exemption had an actual immediate impact on the petitioner. In particular, the commission looked to 12 CSR 10-3.382 which requires sellers to receive a letter of exemption before they may treat sales as exempt. Before an assessment could be issued, both petitioner and its sellers would have to violate the director's regulation.

With respect to whether the organization was in fact exempt under section 144.030.2(19), 144.030.2(20) or 144.030.2(22), RSMo, the commission found against the taxpayer. Those paragraphs provide an exemption for elementary and secondary schools and institutions of higher education. The commission found that the apprenticeship program was none of these.

12 CSR 10-3.384 Sales by Religious, Charitable, Civic, Social, Service and Fraternal Organizations at Community Events

(Rescinded February 11, 1985)

AUTHORITY: section 144.270, RSMo 1978. Original rule filed Jan. 15, 1982, effective May 13, 1982. Amended: Filed May 20, 1983, effective Oct. 13, 1983. Rescinded: Filed Oct. 15, 1984, effective Feb. 11, 1985.

12 CSR 10-3.386 Application for Exemption

(Rescinded February 11, 1985)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 040-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Oct. 15, 1984, effective Feb. 11, 1985.

St. Louis Sheet Metal Joint Apprenticeship Fund v. Director of Revenue, Case No. RS-82-0424 (A.H.C. 11/16/83). A letter was



issued to the petitioner, Apprenticeship Fund, by the director of revenue denying its request for an exemption from the payment of sales and use tax. The director of revenue asserted that the commission had no jurisdiction to rule on the denial of the exemption because the denial did not constitute an appealable final decision. It was the director's position that until such time as an actual assessment had been issued against the petitioner, any order issued by the commission concerning petitioner's right to an exemption would constitute a declaratory judgment, which is beyond the jurisdiction of this state's quasi-judicial bodies according to the decision in *State Tax Commission v. Administrative Hearing Commission*, 641 SW2d 69 (Mo. banc 1982). The commission rejected this argument on the grounds that the issuance of the letter denying the exemption had an actual immediate impact on the petitioner. In particular, the commission looked to 12 CSR 10-3.382 which requires sellers to receive a letter of exemption before they may treat sales as exempt. Before an assessment could be issued, both petitioner and its sellers would have to violate the director's regulation.

With respect to whether the organization was in fact exempt under section 144.030.2(19), 144.030.2(20) or 144.030.2(22), RSMo, the commission found against the taxpayer. Those paragraphs provide an exemption for elementary and secondary schools and institutions of higher education. The commission found that the apprenticeship program was none of these.

12 CSR 10-3.388 Construction Materials
(Rescinded February 28, 2011)

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 040-6 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 April 30, 1995. Rescinded: Filed Aug. 16, 2010, effective Feb. 28, 2011.

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 consider-

ation. 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 10-3.390 Sales Made by and to Elementary and Secondary Schools
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 6 Jan. 22, 1973, effective Feb. 1, 1973. S. T. regulation 040-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.392 Defining Civic
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 040-8 was last filed Dec. 31, 1975; effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.394 Nonprofit Organization
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 4 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-9 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.396 Social and Fraternal Organizations
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 8 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-10 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.398 Auxiliary Organizations
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 4 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-11 was 1st filed Dec. 31, 1975, effective Jan. 10,

1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.400 Parent-Teacher Associations
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 040-12 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.402 Boy Scouts and Girl Scouts
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 9 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-13 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.404 Cafeterias and Dining Halls

PURPOSE: This rule interprets the sales tax law as it applies to cafeterias and dining halls.

(1) Tax exempt schools, charitable institutions, colleges and universities operating lunch rooms, cafeterias, dining rooms or any other facilities where meals are provided to students are not in the business of selling regularly to the public and are not subject to the sales tax. This exemption does not apply to food, drink and snacks sold at student unions and the like, where the items are equally available to and sold to the public.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule nos. 5 and 10 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-14 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: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.

12 CSR 10-3.406 Caterers or Concessionaires
(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 10, Jan. 22, 1973, effective Feb. 1, 1973. S.T.



regulation 040-15 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Aug. 16, 2010, effective Feb. 28, 2011.

12 CSR 10-3.408 Educational Institution's Sales

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 5 Jun. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-16 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.410 Junior Colleges

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 040-17 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.412 Higher Education

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 5 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-10 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.414 Yearbook Sales

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

(1) Publishers of school yearbooks are subject to the sales tax on the gross receipts from all sales of yearbooks to students either directly or through schools. Publishers selling yearbooks to tax exempt schools are not subject to the sales tax when the yearbooks are paid for from school funds.

AUTHORITY: section 144.270, RSMo 1994.* This rule was previously filed as rule no. 6 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-19 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: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.

12 CSR 10-3.416 Eleemosynary Institutions Defined

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 040-20 was last filed Dec. 31, 1975, effective Jan. 10, 1979. Rescinded: Filed Aug. 12, 1980, effective Dec. 11, 1980.

12 CSR 10-3.418 Fraternities and Sororities

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo, 1978. Previously filed as rule no. 7 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-21 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, Dec. 11, 1980.

12 CSR 10-3.420 YMCA and YWCA Organizations

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo, 1978. Previously filed as rule no. 8 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-22 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1990, effective Dec. 11, 1980.

12 CSR 10-3.422 Canteens and Gift Shops

(Rescinded May 30, 2003)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 4 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 040-23 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

12 CSR 10-3.424 Lease and Rental

(Rescinded December 11, 1976)

AUTHORITY: section 144.270 RSMo 1969. Rule filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Sept. 14, 1976, effective Dec. 11, 1976.

12 CSR 10-3.426 Sales of Aircraft

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 040-25 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March

30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Aug. 30, 2010, effective Feb. 28, 2011.

12 CSR 10-3.428 Cigarette and Other Tobacco Products Sales

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 87 Jan. 31, 1974, effective Feb. 15, 1974. S.T. regulation 050-1 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. Rescinded: Filed Aug. 30, 2010, effective Feb. 28, 2011.

Hewitt Well Drilling v. Director of Revenue, 847 SW2d 795 (Mo. banc 1993). Penalty assessment for willful neglect to file return is appropriate unless taxpayer can show good faith belief that transaction was not subject to tax.

12 CSR 10-3.430 Purchaser to Pay the Tax

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 060-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1990.

12 CSR 10-3.431 Handicraft Items Made by Senior Citizens

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Aug. 30, 2010, effective Feb. 28, 2011.

12 CSR 10-3.432 Sale of Prescription Drugs

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 69 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 060-2 was last filed Oct. 28, 1973, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.



12 CSR 10-3.434 Motor Vehicle and Trailer Defined

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 89 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 070-1 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 Aug. 30, 2010, effective Feb. 28, 2011.

Lake & Trail Sports Center v. Director of Revenue, 631 SW2d 339 (Mo. banc 1982). “Dirt bikes” which are in all respects motorcycles, except for lack of lights, were motor vehicles primarily designed for use on highways and thus seller was not required to remit sales tax on sales of dirt bikes.

12 CSR 10-3.436 Manufactured Homes

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 89 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 070-1A 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 Jan. 25, 1984, effective May 11, 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. Rescinded: Filed Aug. 30, 2010, effective Feb. 28, 2011.

12 CSR 10-3.438 Tangible Personal Property Mounted on Motor Vehicles

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 070-2 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: Filed Aug. 30, 2010, effective Feb. 28, 2011.

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 144.030.2(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 pur-

chasers 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. *Rotary Drilling Supply, Inc. v. Director of Revenue*, 662 SW2d 496 (Mo. banc 1983), the court held the use of rigs to drill water wells or exploratory holes would not constitute “mining” within the exemption requirements. The rigs and equipment used were subject to sales tax.

12 CSR 10-3.440 Automobiles

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 36 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 070-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

Op. Atty. Gen. No. 76, Reiss (10-27-76). The Missouri director of revenue is not authorized to impose penalties and/or interest in addition to sales or use tax as provided in the sales tax statutes, sections 144.010–144.510, RSMo 1969, on those individuals who fail to apply for a certificate of ownership on a newly acquired automobile within 30 days from the date of purchase, as required by section 301.190, RSMo 1969. The only penalty collectible, if the certificate of ownership is not applied for within 30 days from the date of purchase, is that provided for in section 301.190.3, RSMo, that is a penalty of five dollars for each month or fraction of a month of delinquency not to exceed twenty-five dollars.

Op. Atty. Gen. No. 221, Spradling (11-3-75). The director of revenue does not have the authority to refund the sales or use tax paid by a purchaser of an automobile at the time of titling and registration when the sale to which the tax applied is subsequently set aside because of the fact that the vehicle has been returned to the seller.

12 CSR 10-3.442 Automotive Demonstrators

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1970. S.T. regulation 070-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.443 Motor Vehicle Leasing Divisions

(Rescinded February 28, 2011)

AUTHORITY: sections 144.070.7. and 144.270, RSMo 1994. Original rule filed May 5, 1978, effective Sept. 12, 1978. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Aug. 30, 2010, effective Feb. 28, 2011.

12 CSR 10-3.444 Collection of Tax on Vehicles

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 070-5 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 Aug. 30, 2010, effective Feb. 28, 2011.

12 CSR 10-3.446 Motor Vehicle Leasing Companies

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 070-6 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 Aug. 30, 2010, effective Feb. 28, 2011.

12 CSR 10-3.448 Annual Permit Renewal

(Rescinded December 11, 1980)

AUTHORITY: section 144.270 RSMo 1978. S.T. regulation 07-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.452 Mailing of Returns

(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 080-2 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 March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.454 No Return, No Excuse—Return Required Even if No Sales Made

(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 080-2A 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. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.456 Calendar Quarter Defined
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 080-3 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.458 Aggregate Amount Defined
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 080-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.460 Return Required
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 080-5 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 Dec. 15, 1999, effective Jan. 1, 2000, expired June 28, 2000. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

Falley's Food-4-Less v. Director of Revenue, Case No. RS-83-0010 (A.H.C. 8/3/87). Petitioner, a retail seller, filed his sales tax returns for October 1981 and August 1982 via the United States mail. The postmark dates on these returns were November 23, 1981 and September 22, 1982, respectively. Respondent assessed penalties for late filing on these periods.

The commission held since the amount of tax imposed on petitioner was in excess of \$250 for the first or second month of a calendar quarter, the payments were due by the twentieth day of the succeeding month. Petitioner was required by statute, not by the director, to file monthly instead of quarterly returns, therefore 144.080.2, RSMo applies rather than 144.090, RSMo.

12 CSR 10-3.462 Annual Filing
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 080-6 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 March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.464 Tax Includes
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 080-7 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 March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.466 Revocation Orders
(Rescinded February 29, 2008)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 083-1 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 Jan. 15, 1987, effective May 11, 1987. Rescinded: Filed Aug. 14, 2007, effective Feb. 29, 2008.

12 CSR 10-3.468 Retail Sales Tax License Necessary
(Rescinded February 29, 2008)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 083-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed June 22, 1987, effective Oct. 25, 1987. Rescinded: Filed Aug. 14, 2007, effective Feb. 29, 2008.

12 CSR 10-3.470 Consumer Cooperatives
(Rescinded May 30, 2006)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 083-3 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 Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Nov. 1, 2005, effective May 30, 2006.

12 CSR 10-3.471 Type of Bond
(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.472 General Bond Examples
(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 087-1 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 Feb. 9, 1983, effective May 12, 1983. Amended: Filed Oct. 15, 1984, effective Feb. 11, 1985. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.474 Computing a Bond
(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 087-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Oct. 15, 1984, effective Feb. 11, 1985. Amended: Filed June 12, 1987, effective Oct. 25, 1987. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.476 Replacing or Applying for Return of Bond
(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 087-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Feb. 9, 1983, effective May 12, 1983. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. 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. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.478 Bond Descriptions
(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 087-4 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: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.479 Replacement of Bonds Issued by Suspended Surety Companies
(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Nov. 3, 1986, effective



Feb. 12, 1987. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.480 Applicant Defined
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 087-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.482 Filing
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulations 090-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.484 Returns Required Even if No Sales Made
(Rescinded January 12, 1985)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 100-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Sept. 7, 1984, effective Jan. 12, 1985.

12 CSR 10-3.486 Confidential Nature of Tax Data
(Rescinded December 30, 2003)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 120-1 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 June 30, 2003, effective Dec. 30, 2003.

12 CSR 10-3.488 Letter of Authorization
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 121-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.490 Misuse of Sales Tax Data by Cities
(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 122-1 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 Aug. 30, 2010, effective Feb. 28, 2011.

12 CSR 10-3.492 General Examples
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 130-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.494 Allowance for Defective Merchandise
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 130-2 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 March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.496 Seller Timely Payment Discount
(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 140-1 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 Aug. 30, 2010, effective Feb. 28, 2011.

12 CSR 10-3.498 Seller Retains Collection From Purchaser
(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 140-2 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 Sept. 13, 2010, effective Feb. 28, 2011.

12 CSR 10-3.500 Successor Liability
(Rescinded May 30, 2003)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 150-1 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. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

James R. Bates, d/b/a The Manor Inn, Successor v. Director of Revenue, 691 SW2d 273 (Mo. banc 1985). This is a case of first

impression interpreting the successor liability sales tax statute, section 144.150, RSMo.

The owner/operator, J. Douglas Cassity, accrued a sales tax liability to the state of Missouri. The same owner/operator defaulted on a first deed of trust to the Carney family, the prior owners. Great Southern Savings & Loan, to protect its junior deed of trust, purchased The Manor Inn at a foreclosure sale, applying the payment to satisfy the first deed of trust and using the balance to reduce its junior deed of trust. In a declaratory judgment proceeding, Cassity challenged the foreclosure sale and Great Southern Savings & Loan joined challenging the amount of the attorney's fee. While the declaratory suit was pending, James R. Bates negotiated the purchase of the same business. Great Southern and Bates entered into a loan agreement whereby Bates executed a promissory note for \$975,000, secured by a deed of trust, to Great Southern and Great Southern quitclaimed its interest in the realty to Bates and provided a bill of sale for the personal property. Simultaneously, Cassity quitclaimed his interest in the realty and provided a bill of sale for the personal property to Bates in consideration for \$3000 in gemstones from Bates.

The issue is whether James R. Bates was liable as a successor for the delinquent sales tax liability of the former owner, Cassity.

The Missouri Supreme Court held that "to be a successor one must be a purchaser of the business property in question." The derivative tax liability follows the assets purchased and is not extinguished in a foreclosure. The court distinguished cases cited by the appellant which involved either a court-appointed receiver in bankruptcy or a lessor's reacquisition of possession. The court held that Bates was a successor regardless of from whom he purchased the property. If Bates purchased from Cassity, he was an immediate successor. If Bates purchased from Great Southern, who purchased from Cassity, Bates was still a successor because the statute was not limited to immediate successors.

The court also noted that the term "purchase money" within the context of section 144.150, RSMo is not limited to cash transactions but is merely "descriptive of 'the action to be taken by the person or business entity on whom the duty has been imposed'"

12 CSR 10-3.502 Successor Determination
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1979. S.T. regulation 150-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

**12 CSR 10-3.504 Extensions Granted**

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 160-1 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 Sept. 13, 2010, effective Feb. 28, 2011.

12 CSR 10-3.506 Determination of Timeliness

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 160-2 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 Sept. 13, 2010, effective Feb. 28, 2011.

Evergreen Lawn Service v. Director of Revenue, State of Missouri and the Administrative Hearing Commission, 685 SW2d 829 (Mo. banc 1985). The issue in this case was whether the taxpayer met the thirty-day requirement contained in section 161.273, RSMo, for filing its appeal from a final decision of the director of revenue. In this case the thirtieth day was a Saturday. The taxpayer's agent, Airborne Freight Corporation, attempted delivery of the appeal at the offices of the Administrative Hearing Commission on that Saturday. Since no one was available to receive the appeal, it was not physically received by the commission until Monday, the thirty-second day.

The director posited and the commission held that the taxpayer's appeal was untimely. They reasoned that the only exception to actual receipt was section 161.350, RSMo, which deems timely the receipt of appeals mailed within the prescribed period by registered mail.

The court's analysis was not directed towards when the thirty-day period expired, but rather towards what action was sufficient to constitute filing. In the court's opinion section 161.350, RSMo, was not relevant, since actual filing had been attempted on Saturday, the thirtieth day. The court found that the attempted delivery was adequate to constitute a constructive filing thereby making the appeal timely.

Falley's Food-4-Less v. Director of Revenue, Case No. RS-83-0010 (A.H.C. 8/3/87). Petitioner, a retail seller, filed his sales tax returns for October 1981 and August 1982 via the United States mail. The postmark dates on these returns were November 23, 1981, and September 22, 1982, respectively. Respondent assessed penalties for late filing

on these periods.

The Administrative Hearing Commission held since the amount of tax imposed on petitioner was in excess of \$250 for the first or second month of a calendar quarter, the payments were due by the twentieth day of the succeeding month. Petitioner was required by statute, not by the director, to file monthly instead of quarterly returns, therefore 144.080.2, RSMo, applies rather than 144.090, RSMo.

Further, 12 CSR 10-3.506 provides that timeliness of a sales tax return is to be determined by reference to the return's postmark. Because petitioner's returns were postmarked November 23 and September 22, these returns were filed out of time.

12 CSR 10-3.508 Effect of Saturday, Sunday or Holiday on Payment Due

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 160-3 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 16, 1980.

12 CSR 10-3.510 No Permanent Extensions

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 160-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.512 Calendar Month Defined

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 170-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.514 Exemption Certificate

(Rescinded May 30, 2003)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 190-1 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 Nov. 15, 2002, effective May 30, 2003.

12 CSR 10-3.516 Application for Refund/Credit—Amended Returns

(Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994.

S.T. regulation 190-2 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. 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. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

International Business Machines, Inc. v. Department of Revenue, 765 SW2d 611 (Mo banc. 1989).

12 CSR 10-3.518 Claim Form

(Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 190-3 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 April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-3.520 Who Should Request Refund

(Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 190-4 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 April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-3.522 Purchaser's Promise to Accrue and Pay

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 190-5 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. Rescinded: Filed Sept. 13, 2010, effective Feb. 28, 2011.

12 CSR 10-3.524 Bad Debts

(Rescinded May 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 190-6 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 Nov. 9, 2000, effective May 30, 2001.



12 CSR 10-3.526 Refund Rather Than Credit

(Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 190-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-3.528 No Interest on Refund/Credit

(Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 190-8 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

International Business Machines v. State Tax Commission, 362 SW2d 635 (1962). As to sales tax improperly collected, there is a provision for refund, but there is no provision that refunds bear interest.

12 CSR 10-3.530 Unconstitutional Taxes

(Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. Based on the 1952 Supreme Court Decision *Kleban v. Morris*, 363 Mo. 7, 247 SW2d 832. S.T. regulation 200-1 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 April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-3.532 Resale Exemption Certificates

(Rescinded May 30, 2003)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 210-1 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 July 20, 1987, effective Oct. 25, 1987. Amended: Filed Aug. 2, 1988, effective Jan. 13, 1989. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

Op. Atty. Gen. No. 13, Burke (4-11-50). Persons engaged in business who do not have resale certificates with respect to certain transactions may offer evidence that such sales were not sales at retail.

House of Lloyd, Inc. v. Department of Revenue, Case Nos. RS-80-0053 and RS-80-0054 (A.H.C. 7/8/82). The Department of Revenue assessed the taxpayers for Missouri sales and use taxes for supplies purchased for their businesses under improper resale exemption certificates. The commission held that the waiver of the statute of limitations executed by the taxpayer's bookkeeper was invalid because the bookkeeper-auditor lacked actual authority. The Department of Revenue failed to meet its burden of proof on the issue of the waiver's validity by failing to show that the department's auditor had attempted to ascertain if petitioner's agent was acting within the scope of his authority before the bookkeeper-auditor signed the waiver of the statute of limitations.

Churchill Truck Lines, Inc. v. Director of Revenue, Case No. RS-85-0733 (A.H.C. 5/28/87). Taxpayer is a truck line, and objected to a sales tax assessment based upon sales of salvage freight and a use tax assessment based on the purchase of an airplane. The Administrative Hearing Commission found for the Department of Revenue on both issues. On the salvage issue, the commission found that the taxpayer failed to prove that resale exemption certificates were received on the purchase from the purchaser of the salvage.

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 acknowledgment 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 10-3.534 Delivery of the Sale for Resale Exemption Certificate

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 210-2 was filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Sept. 13, 2010, effective Feb. 28, 2011.

Op. Atty. Gen. No. 13, Burke (4-11-50). Persons engaged in business who do not have resale certificates with respect to certain transactions may offer evidence that such sales were not sales at retail.

House of Lloyd, Inc. v. Department of Revenue, Case Nos. RS-80-0053 and RS-80-0054 (A.H.C. 7/8/82). The Department of Revenue assessed the taxpayers for Missouri sales and use taxes for supplies purchased for their businesses under improper resale exemption certificates. The commission held that the waiver of the statute of limitations executed by the taxpayer's bookkeeper was invalid because the bookkeeper-auditor lacked actual authority. The Department of Revenue failed to meet its burden of proof on the issue of the waiver's validity by failing to show that the department's auditor had attempted to ascertain if petitioner's agent was acting within the scope of his authority before the bookkeeper-auditor signed the waiver of the statute of limitations.

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.

12 CSR 10-3.536 Seller's Responsibility for Collection and Remittance of Tax

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 210-3 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 Sept.



7, 1984, effective Jan. 12, 1985. Rescinded: Filed Sept. 13, 2010, effective Feb. 28, 2011.

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.

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 **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.

Besel Roofing & Heating, Inc. v. Director of Revenue, Case No. RS-86-0240 (A.H.C. 8/27/87). The contractor contested liability on the grounds that the seller should not have accepted the exemption certificate it offered because the certificate was missing information required by the department on a valid certificate. The Administrative Hearing Commission rejected the argument and held that where the exemption is improperly claimed, the department can recover from the purchaser.

12 CSR 10-3.538 Possession and Delivery of Exemption Certificates
(Rescinded May 30, 2003)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 210-4 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 Nov. 15, 2002, effective May 30, 2003.

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.

12 CSR 10-3.540 Limitation on Assessment
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 220-1 was last filed Dec. 31, 1975, effective June 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

State ex rel. St. Louis Die Casting Corp. v. Morris, 219 SW2d 359 (1949). The failure of the director of revenue to include with the notice of additional assessment under section 144.210, RSMo a statutory notice in writing naming the time and place for a hearing "when and where such owner may appear before said board" caused the additional assessment to be void.

State ex rel. St. Louis Shipbuilding and Steel Company v. Smith, 201 SW2d 153 (1947). Respondent (state auditor) did not have the authority to compromise a tax that had been lawfully assessed. Under (former) section 11408 an assessment is made every



time a sale is made at retail. (However) there is nothing in the Constitution or statutes that would prohibit respondent (state auditor) from compromising the interest and penalties in a disputed sales tax liability. The fact that it later may be found that no tax was due does not disturb the compromise.

12 CSR 10-3.542 Billing

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 230-1 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 Sept. 13, 2010, effective Feb. 28, 2011.

12 CSR 10-3.544 Acknowledgement of Informal Hearing

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 230-2 was last filed Dec. 31, 1975, effective Jan. 10 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.546 Fifteen Days Defined—Personal Service

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation, 230-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980

12 CSR 10-3.548 Form of Reassessment

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 240-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.550 Reassessment Petition Filing

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 240-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.552 Protest Payments

PURPOSE: This rule interprets the sales tax law as it applies to protest payments.

(1) If the taxpayer in good faith believes that s/he is not subject to the sales tax under the Missouri sales tax act, s/he, upon payment of the required amount of tax and denoting the payment as a protest payment when made, may file a protest payment affidavit, in which s/he specifically shall set out why s/he is protesting payment of the tax and give supporting information. The protest claim shall be made under oath and submitted within thirty (30) days after the protest payment. Failure to denote the payment as made under protest or to make a protest claim within the time required and under the conditions specified will void the protest claim.

(2) Protest payment forms (DOR-163) are available from the director of revenue upon request. Written request should be sent to Business Taxes Bureau, Technical Support Section, P.O. Box 840, Jefferson City, MO 65105.

(3) If a protest payment is not made by the required due date, interest and additions to tax should be included in the payment to properly perfect the protest.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 240-3 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: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.

12 CSR 10-3.554 Filing Protest Payment Returns

PURPOSE: This rule provides instructions for filing protest payment returns.

(1) A taxpayer filing a protest payment return must submit a notarized protest payment affidavit with the return reflecting the specific amount of tax being paid under protest. Separate checks need not be submitted for the state and local sales taxes being protested.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 240-4 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: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.

12 CSR 10-3.556 Interest and Discounts are Additional

(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 250-1 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 Sept. 13, 2010, effective Feb. 28, 2011.

State ex rel. St. Louis Shipbuilding and Steel Company v. Smith, 201 SW2d 153 (1947). Respondent (state auditor) did not have the authority to compromise a tax that had been lawfully assessed. Under (former) section 11408 an assessment is made every time a sale is made at retail. (However) there is nothing in the Constitution or statutes that would prohibit respondent (state auditor) from compromising the interest and penalties in a disputed sales tax liability. The fact that it later may be found that no tax was due does not disturb the compromise.

12 CSR 10-3.560 Rulings

(Moved to 12 CSR 10-3.003)

12 CSR 10-3.562 No Waiver of Tax

(Rescinded January 30, 2010)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 270-4 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 13, 2009, effective Jan. 30, 2010.

State ex rel. St. Louis Shipbuilding and Steel Company v. Smith, 201 SW2d 153 (1947). Respondent (state auditor) did not have the authority to compromise a tax that had been lawfully assessed. Under (former) section 11408 an assessment is made every time a sale is made at retail. (However) there is nothing in the Constitution or statutes that would prohibit respondent (state auditor) from compromising the interest and penalties in a disputed sales tax liability. The fact that it later may be found that no tax was due does not disturb the compromise.

12 CSR 10-3.564 Jeopardized Collection

(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 290-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.565 Jeopardy Assessment

(Rescinded February 28, 2011)



AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Sept. 13, 2010, effective Feb. 28, 2011.

12 CSR 10-3.566 Itinerant or Transitory Sellers (Rescinded May 30, 2006)

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rules nos. 32 and 33 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 290-2 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 Nov. 1, 2005, effective May 30, 2006.

12 CSR 10-3.568 Sampling (Rescinded May 30, 2006)

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 320-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Dec. 12, 1989, effective May 11, 1990. Rescinded: Filed Nov. 1, 2005, effective May 30, 2006.

Evergreen Lawn Service v. Director of Revenue, Case No. RS-80-0187 (A.H.C. 7/13/87). The taxpayer questioned the validity of the audit method utilized by the respondent because the assessment for these periods was not based upon the examination of actual records for those periods, but was estimated and extrapolated by unknown means. The Administrative Hearing Commission held that based upon the statutes and regulations, the respondent is authorized to compute estimated assessments on the basis of accurate and thorough examination of a taxpayer's actual records or other relevant data pertaining to the period in question. The commission concluded that the audit did not meet this standard and discarded this portion of the audit and assessments.

12 CSR 10-3.570 Audit Facilities

PURPOSE: This rule outlines the responsibility of the taxpayer to furnish audit facilities.

(1) All taxpayers must furnish reasonably sufficient work space, lighting and working conditions for use by Department of Revenue agent(s) for the conducting of sales/use tax audits.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 320-3 was last filed Oct. 28,

1975, effective Nov. 7, 1975. Refiled March 30, 1976.

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

12 CSR 10-3.572 Out-of-State Companies

PURPOSE: This rule outlines the responsibility of out-of-state companies for making records pertaining to Missouri locations available for audit at the Missouri location.

(1) Companies who have business location(s) in Missouri and maintain records at a central location outside Missouri, upon request, must make any or all records pertaining to the Missouri location(s) available to agents of the Department of Revenue at the Missouri location.

AUTHORITY: section 144.270, RSMo 1994.* S.T. regulation 320-4 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.

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

12 CSR 10-3.574 Recordkeeping Requirements for Microfilm and Data Processing Systems

PURPOSE: This rule outlines the responsibility of companies whose records are on transparencies or film to provide facilities for viewing and capabilities for reproducing hard copies.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) Every retailer, seller, vendor and person doing business in this state or storing, using, leasing or otherwise consuming in this state tangible personal property shall keep complete and adequate records as may be necessary for the director or his/her authorized agent to determine the amount of sales and use tax liability as provided by Missouri law.

These records must include the normal books of account ordinarily maintained by the average prudent businessman engaged in a business, together with all bills, receipts, invoices, cash register tapes or other documents of original entry supporting the entries in the books of account together with all schedules or working papers used in connection with the preparation of tax returns. Unless the director or his/her authorized agent authorizes an alternative method of bookkeeping in writing, these records shall show—

(A) Gross receipts from sales or rental receipts from leases, of tangible personal property (including any services that are a part of the sale or lease) made in this state, irrespective of whether the retailer, seller, vendor, person lessor or lessee regards the receipts to be taxable or nontaxable;

(B) All deductions allowed by law and claimed on the return filed; and

(C) Total purchase price of all tangible personal property purchased for sale, consumption or lease in this state.

(2) Microfilm and Microfiche Records. Records may be microfilmed or microfiched, including general books of accounts, such as cash books, journals, voucher registers, ledgers and like documents, as long as these microfilmed and microfiched records are authentic, accessible and readable and the following requirements are fully satisfied:

(A) Appropriate facilities are to be provided for preservation of the films or fiche for the periods required and open to examination and the taxpayers agree to provide transcriptions of any information on microfilm or microfiche which may be required for verification of tax liability;

(B) All microfilmed and microfiched data must be indexed, cross-referenced and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included and systematically filed to permit ready access;

(C) Taxpayers must make available upon request of the director or his/her authorized agent a reader/printer in good working order for reading, locating and reproducing any record concerning sales or use tax liability, or both, that is maintained on microfilm or microfiche;

(D) Taxpayers must set forth in writing the procedures governing the establishment of a microfilm or microfiche system and the individuals who are responsible for maintaining and operating the system with appropriate authorization from the board of directors, general partner(s) or owner, whichever is applicable;

(E) The microfilm or microfiche system must be complete and must be used consistently in the regularly conducted activity of



the business;

(F) Taxpayers must establish procedures with appropriate documentation so the original document can be followed through the microfilm or microfiche system;

(G) The retailer/vendor must establish internal procedures for microfilm or microfiche inspection and quality assurance;

(H) The retailer/vendor is responsible for the effective identification, processing, storage and preservation of microfilm or microfiche making it readily available for as long as the contents may become material in the administration of any state revenue law;

(I) The retailer/vendor must keep a record identifying by whom the microfilm or microfiche was produced;

(J) When displayed on a microfilm or microfiche reader (viewer) or reproduced on paper, the material must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers; and

(K) All production of microfilm or microfiche and processing duplication, quality control, storage, identification and inspection must meet industry standards as set forth by the American National Standards Institute, National Micrographics Association or National Bureau of Standards.

(3) Records Prepared By Automated Data Processing (ADP) Systems. An ADP tax accounting system may be used to provide the records required for the verification of tax liability. Although ADP systems will vary from one (1) taxpayer to another, all these systems must include a method of producing legible and readable records which will provide the necessary information for verifying the tax liability. The following requirements apply to any taxpayer who maintains any of these records on an ADP system:

(A) Recorded or Reconstructible Data. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detail printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions;

(B) General and Subsidiary Books of Account. A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the sub-

sidary ledgers shall also be written out periodically;

(C) Supporting Documents and Audit Trail. The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the director or his/her authorized agent upon request. The system shall be so designed that supporting documents such as sales invoices, purchase invoices, credit memoranda and like documents are readily available;

(D) Program Documentation. A description of the ADP portion of the accounting system shall be made available. Important changes, together with their effective dates, shall be noted in order to preserve an accurate chronological record. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate—

1. The application being performed;
2. The application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and
3. The controls used to insure accurate and reliable processing; and

(E) Data Storage Media. Adequate record retention facilities shall be available for storing tax data and printouts as well as all supporting documents as may be required by law.

(4) Records Retention. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three (3) years.

(5) Examination of Records. All of the foregoing records shall be made available for examination within a reasonable time on request by the director or his/her authorized agent.

(6) Failure of the Taxpayer to Maintain and Disclose Complete and Adequate Records. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this regulation, the director shall—

(A) Impose and not abate or reduce in amount any additions/penalty as may be authorized by law; and

(B) Refer, where a taxpayer willfully fails to be in compliance by failure to file or understatement of sales or receipts, the information to the Criminal Investigation Bureau of the Department of Revenue.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 320-5 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Sept. 28, 1987, effective Jan. 14, 1988.*

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

12 CSR 10-3.576 Records Retention (Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 320-6 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

Cascio v. Beam, 594 SW2d 942 (Mo. banc 1980). Absent fraud or failure to file return, the Department of Revenue may not inspect taxpayer's sales tax records more than two years old (sections 144.320 and 144.330, RSMo).

12 CSR 10-3.578 Income Tax Returns May be Used

PURPOSE: This rule authorizes the use of income tax returns for the purpose of determining the amount of sales tax due.

(1) The director of revenue or his/her authorized agents, in determining the amount of sales tax due, are authorized to examine the taxpayer's books and records including the taxpayer's federal or state, or both, income tax returns and to use, in arriving at the proper amount of sales tax due, the information which may be found on the returns.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 330-1 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: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.579 Estoppel Rule

PURPOSE: This rule interprets the sales tax law as it applies to representations, both oral and written, made by employees of the Department of Revenue and the extent to which taxpayers may rely on these statements.

(1) Representations, both oral and written, by employees or representatives of the Department of Revenue, interpreting the status of the sales tax law, are merely for informational purposes and cannot be relied upon to substantiate or defend a position in litigation before any forums (see *St. Louis Country Club v. Administrative Hearing Commission of Missouri*, 657 SW2d 614 (Mo. banc 1983)).



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

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

12 CSR 10-3.580 Registered Mail
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. Regulation 360-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.582 Hearing Location
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 370-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

State ex rel. St. Louis Die Casting Corp. v. Morris, 219 SW2d 359 (1949). The failure of the director of revenue to include with the notice of additional assessment under section 144.210, RSMo a statutory notice in writing naming the time and place for a hearing “when and where such owner may appear before said board” caused the additional assessment to be void.

12 CSR 10-3.584 Lien Filing
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 380-1 was filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 6, 1980, effective Dec. 11, 1980.

12 CSR 10-3.585 Filing of Liens
(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Sept. 15, 2010, effective Feb. 28, 2011.

12 CSR 10-3.586 Partial Release of Lien
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 280-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 6, 1980, effective Dec. 11, 1980.

State ex rel. St. Louis Shipbuilding and

Steel Company v. Smith, 201 SW2d 153 (1947). Respondent (state auditor) did not have the authority to compromise a tax that had been lawfully assessed. Under (former) section 11408 an assessment is made every time a sale is made at retail. (However) there is nothing in the Constitution or statutes that would prohibit respondent (state auditor) from compromising the interest and penalties in a disputed sales tax liability. The fact that it later may be found that no tax was due does not disturb the compromise.

12 CSR 10-3.588 Taxation of Computer Software Programs
(Rescinded May 30, 2001)

AUTHORITY: sections 144.270 and 144.705, RSMo 1994. Original rule filed Feb. 25, 1983, effective June 11, 1983. Amended: Filed Feb. 2, 1990, effective June 28, 1990. Rescinded: Filed Nov. 9, 2000, effective May 30, 2001.

Ray S. James v. TRES Computer Systems, Inc., et al. 642 SW2d 347 (Mo. banc 1982). The issue in this case concerned whether the transfer of custom-made computer software by the use of tapes containing the data and programs constituted the sale of tangible personal property subject to sales tax. The court ruled that the data and programs in this case should not be taxed as tangible personal property because: 1) the tapes themselves were not the ultimate object of sale; and 2) it was not necessary that the information be put on tape. The court, in recognizing that computer technology is rapidly developing in complexity, emphasized that it did not intend to formulate a fixed, general rule which later could lead to unpredictable results.

12 CSR 10-3.590 Advertising Businesses
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed June 13, 1984, effective Nov. 11, 1984. Amended: Filed Dec. 2, 1985, effective March 24, 1986. Rescinded and readopted: Filed April 18, 1990, effective June 28, 1990. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.614 Theaters—Criteria for Exemption

PURPOSE: This rule sets forth the criteria which must be met by a theater in order to claim sales tax exemption.

PUBLISHER’S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency’s headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) All ticket sales made by nonprofit summer theater organizations, if these organizations are exempt from federal tax under the provisions of the *Internal Revenue Code*, are not subject to the sales tax. All other purchases and sales made by these organizations are subject to the sales tax.

(2) A summer theater organization is a theater organization that presents performances primarily during the month of June, July, August or September.

(3) All sales made by or to nonprofit or community theaters other than summer theater organizations are subject to the sales tax.

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

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

12 CSR 10-3.620 Review of Assessments by the Administrative Hearing Commission
(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed Jan. 3, 1996, effective July 30, 1996. Rescinded: Filed Sept. 15, 2010, effective Feb. 28, 2011.

12 CSR 10-3.622 Special Event Liquor License—Temporary Sales Tax License
(Rescinded August 26, 1985)

AUTHORITY: section 144.270, RSMo 1978. Original rule filed Sept. 10, 1984, effective Jan. 12, 1985. Rescinded: Filed May 22, 1985, effective Aug. 26, 1985.



12 CSR 10-3.626 Quarter-Monthly Period Reporting and Remitting Sales Tax

(Rescinded February 28, 2011)

AUTHORITY: section 144.081, RSMo 1994. This rule was previously filed as 12 CSR 10-3.027. Emergency rule filed Dec. 30, 1983, effective Jan. 9, 1984, expired May 8, 1984. Original rule filed Dec. 30, 1983, effective April 12, 1984. Amended: Filed May 9, 1985, effective Aug. 26, 1985. Amended: Filed March 21, 1986, effective July 11, 1986. Emergency amendment filed March 4, 1991, effective March 14, 1991, expired July 11, 1991. Amended: Filed March 4, 1991, effective July 8, 1991. Amended: Filed April 14, 1995, effective Sept. 30, 1995. Rescinded: Filed Sept. 15, 2010, effective Feb. 28, 2011.

12 CSR 10-3.830 Diplomatic Exemptions—Records to be Kept by Sellers as Evidence of Exempt Sales

(Rescinded September 30, 2010)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Dec. 3, 1985, effective Feb. 24, 1986. Rescinded: Filed Feb. 26, 2010, effective Sept. 30, 2010.

12 CSR 10-3.832 Diplomatic Exemptions—Acknowledgement and Procedure for Requesting

(Rescinded September 30, 2010)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Dec. 3, 1985, effective Feb. 24, 1986. Rescinded: Filed Feb. 26, 2010, effective Sept. 30, 2010.

12 CSR 10-3.834 Titling and Sales Tax Treatment of Boats

(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1992. Original rule filed May 21, 1986, effective Aug. 25, 1986. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.836 Payment of Filing Fees for Lien Releases

(Rescinded December 30, 2003)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Nov. 19, 1986, effective March 12, 1987. Rescinded: Filed June 30, 2003, effective Dec. 30, 2003.

12 CSR 10-3.838 Payment of Filing Fees for Tax Liens

(Rescinded December 30, 2003)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Nov. 19, 1986, effective March 12, 1987. Rescinded: Filed June 30, 2003, effective Dec. 30, 2003.

12 CSR 10-3.840 Photographers

(Rescinded April 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed April 10, 1987, effective Aug. 13, 1987. Amended: Filed Oct. 22, 1987, effective Feb. 11, 1988. Rescinded: Filed Oct. 6, 2000, effective April 30, 2001.

12 CSR 10-3.842 Surety Companies—Remittance Requirements

(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed June 12, 1987, effective Oct. 25, 1987. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.844 Letters of Credit

(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 28, 1987, effective Jan. 14, 1988. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.846 Taxability of Sales Made at Fund-Raising Events Conducted by Clubs and Organizations Not Otherwise Exempt From Sales Taxation

PURPOSE: This rule clarifies the taxability of admission charges to certain fund-raising events conducted by clubs and organizations not otherwise exempt from the collection and payment of sales tax.

(1) Admission receipts to a fund-raising event, where food and beverages or other tangible personal property are provided to those attending, are not subject to sales tax when the person conducting the fund-raising event has paid sales tax on his/her purchases of the food and beverages and other tangible personal property to be provided to those attending. The taxable event takes place when the food and beverages are purchased by the promoter of the event. For sales tax purposes, the promoter of the event is deemed to be the

consumer of the food, beverages and other tangible property.

(2) Receipts derived from the sale of tangible personal property, which are separate from and unrelated to the admission receipts from the fund-raising event, are subject to sales tax.

(3) Example: A club conducts a fund-raising event. Admission tickets are sold for fifty dollars (\$50) each. The ticket entitles the purchaser to admission to the event which includes food and beverages which were purchased from a caterer by the club for twenty dollars (\$20) per person plus sales tax. The ticket also includes a memento, a soccer ball key chain, which the club purchased for one dollar (\$1), plus sales tax. During the course of the event, an auction is conducted and items are sold to raise additional funds. Photos of the team are also offered for sale. Receipts from the admission tickets are considered donations and are not subject to sales tax; however, receipts derived from the auction and sale of the photos are subject to sales tax.

(4) Example: Assume the same facts as in section (3). There is also a cash bar operated by the hotel. The hotel must collect sales tax on all sales made at its bar.

(5) Example: A club conducts a fund-raiser. Admission tickets are sold for one hundred dollars (\$100) each. The club buys food and beverages under a resale exemption certificate. The actual cost of food and beverages is twenty dollars (\$20) per ticket. Since the club did not pay tax on its purchase of food and beverages, but purchased them for resale, the taxable event is considered to take place when the admission ticket is sold. Therefore, the club must obtain a temporary sales tax license and must collect sales tax on the one hundred dollar (\$100) admission ticket.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Dec. 15, 1987, effective April 28, 1988.*

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

12 CSR 10-3.848 Concrete Mixing Trucks

(Rescinded January 30, 2000)

AUTHORITY: sections 144.030.2(5) and 144.270, RSMo 1994. Original rule filed July 6, 1988, effective Oct. 27, 1988. Rescinded: Filed July 14, 1999, effective Jan. 30, 2000.



12 CSR 10-3.850 Veterinary Transactions
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Feb. 23, 1989, effective June 11, 1989. 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. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

- .151 (federal excise tax per gallon)
- .800 (Net per gallon subject to tax)
- × .0625 (state and local tax rate)
- .05 (tax per gallon)
- × 1,000 (gallons sold to B) =
- \$50.00 (sales tax due)

AUTHORITY: sections 142.621 and 144.270, RSMo 1994. Original rule filed Aug. 23, 1988, effective Jan. 27, 1989.*

**Original authority: 142.621, RSMo 1972 and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

the purchaser to the seller that the sale was to a state senator or state representative and purchased from funds in his/her state expense account. Letters of exemption, issued by the Department of Revenue, are valid for the state senator's or representative's term of office.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 26, 1989, effective May 11, 1989.*

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

12 CSR 10-3.852 Orthopedic and Prosthetic Devices, Insulin and Hearing Aids
(Rescinded October 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Aug. 23, 1988, effective Jan. 27, 1989. Amended: Filed Dec. 12, 1989, effective May 24, 1990. Rescinded: Filed April 19, 2000, effective Oct. 30, 2000.

12 CSR 10-3.856 Direct Pay Agreement
(Rescinded February 28, 2011)

AUTHORITY: sections 144.190.4 and 144.270, RSMo 1994. Original rule filed May 2, 1989, effective Sept. 11, 1989. Rescinded: Filed Sept. 15, 2010, effective Feb. 28, 2011.

12 CSR 10-3.860 Marketing Organizations Soliciting Sales Through Exempt Entity Fund-Raising Activities
(Rescinded May 30, 2003)

AUTHORITY: section 144.705, RSMo 1994. Original rule filed Feb. 23, 1989, effective Aug. 11, 1989. Rescinded: Filed Nov. 15, 2002, effective May 30, 2003.

12 CSR 10-3.854 Applicability of Sales Tax to the Sale of Special Fuel

PURPOSE: This rule explains the method of calculating sales tax on special fuel which is used for nonhighway purposes.

- (1) Gross receipts from the sale of special fuel, as defined in section 142.362(8), RSMo, which is used for nonhighway purposes, are subject to Missouri state sales tax.
- (2) Sales tax on the sale of special fuel for nonhighway purposes, should be calculated as follows: the total retail selling price of the special fuel less the federal excise tax should be multiplied by the applicable state and local sales tax rate.
- (3) Example: Special fuel Dealer A sells one thousand (1,000) gallons of diesel fuel for nonhighway use to Customer B. The appropriate federal excise tax per gallon should be subtracted from the total sales price per gallon and state and local sales tax figured on the remainder. The resulting figure will reflect the amount of sales tax due per gallon sold. Assume the total selling price of diesel fuel inclusive of the federal excise tax is \$.951 per gallon and that \$.151 is the portion attributable to federal excise tax. Special fuel Dealer A should deduct \$.151 per gallon from the selling price of \$.951. The remaining \$.80 per gallon should be multiplied by the appropriate state and local sales tax rate.

\$.951 (retail selling price per gallon)

12 CSR 10-3.858 Purchases by State Senators or Representatives

PURPOSE: This rule clarifies the treatment of the tax liability on purchases by a Missouri state senator or representative.

- (1) Purchases of tangible personal property made by or on behalf of a Missouri state senator or representative are exempt from all taxes imposed by Chapters 66, 67, 92, 94 and 144, RSMo and Article IV, sections 43A and 47A of the *Missouri Constitution* providing these purchases are made from funds in the senator's or representative's state expense account.
- (2) Exempt items include:
 - (A) Purchases of meals, lodging and other travel expenses itemized on the state senator's or state representative's monthly expenses account (form C-12); and
 - (B) Purchases or rental of office furniture, supplies and equipment which are itemized to the house or senate accounting office for reimbursement.
- (3) Purchases and personal living expenses reimbursed by the per diem for state senators and state representatives authorized under section 21.145, RSMo are not exempt from state sales and use taxes.
- (4) A copy of a valid letter of exemption must be furnished to the seller when purchasing or leasing property. The letter of exemption represents evidence of a claim of exemption by

12 CSR 10-3.862 Sales Tax on Vending Machine Sales
(Rescinded February 28, 2011)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 8, 1989, effective Jan. 26, 1990. Rescinded: Filed Sept. 15, 2010, effective Feb. 28, 2011.

12 CSR 10-3.866 Bulldozers for Agricultural Use
(Rescinded November 30, 2000)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 16, 1990, effective May 11, 1990. Rescinded: Filed May 24, 2000, effective Nov. 30, 2000.

12 CSR 10-3.868 Not-for-Profit Civic, Social, Service or Fraternal Organizations—Criteria for Exemption
(Rescinded March 30, 2011)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 16, 1990, effective June 28, 1990. Rescinded: Filed Oct. 7, 2010, effective March 30, 2011.

12 CSR 10-3.870 Information Required to be Filed by Not-for-Profit Organizations Applying for a Sales Tax Exemption Letter
(Rescinded February 28, 2011)



AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 16, 1990, effective June 28, 1990. Rescinded: Filed Sept. 15, 2010, effective Feb. 28, 2011.

12 CSR 10-3.872 Sales of Newspapers and Other Publications

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

(1) Newspapers, magazines, newsletters, periodicals, trade journals, publications, books and other printed materials are tangible personal property and the gross receipts from retail sales of these items are taxable. Publishers and other sellers of newspapers are engaged in the business of selling tangible personal property and they are subject to all rules applicable to sellers, except as otherwise specifically provided in this rule.

(2) Sales of newspapers for resale are not subject to sales tax. Sales of newspapers at retail are subject to sales tax.

(3) If a subscriber contracts directly with a person other than a publisher for the purchase of a newspaper, and that person bears the risk of loss for noncollection, then that person is making the retail sale and is subject to tax. If the subscriber contracts directly with the publisher, or if the publisher bears the risk of loss for noncollection, the publisher is subject to tax.

(A) Where the publisher sets or controls the seller's sales price, the seller shall collect and remit the tax to the publisher, and the publisher shall remit the tax to the department. The local tax shall be based on the publisher's principal place of business. The publisher shall be entitled to the timely filing discount if payment is made timely.

(B) Where the seller other than the publisher sets or controls the sales price, the seller shall obtain a retail sales tax license, collect and remit the tax directly to the department. The publisher shall obtain a resale exemption certificate from the seller on these sales.

(4) Publishers are liable for sales tax on mail subscriptions if the publisher handles the sale, collection, packaging and delivery to the post office. Sales tax on paid-in-advance subscriptions is due at the time payment is received. When subscriptions for newspapers are accepted by the seller within Missouri, the order is sent to a printer within Missouri

and the publications are mailed after that to the subscriber within Missouri, the receipts from the subscriptions are subject to the state and local tax by the publisher. If the order is accepted in Missouri and sent to a printer outside Missouri and the publications are mailed after that to the subscriber within Missouri, the receipts are subject to vendors' use tax. Where the seller accepts the order outside Missouri and the seller has nexus with Missouri, the seller's receipts are subject to Missouri sales/use tax.

(5) Sales of newspapers through vending machines are subject to sales tax at one hundred thirty-five percent (135%) of the wholesale price sold to sellers or vendors or the retail sales price, whichever is lower. The vendor who owns the newspaper sold through the vending machine is liable for the tax (see section 144.012, RSMo and 12 CSR 10-3.862).

(6) Newspaper publishers are manufacturers of tangible personal property intended to be sold ultimately at retail. Purchases of machinery and equipment by publishers may qualify for the machinery and equipment exemptions under section 144.030.2(4) and (5), RSMo (see 12 CSR 10-3.320, 12 CSR 10-3.326 and 12 CSR 10-3.327).

(7) Newsprint and ink, and rubber bands, twine, rain bags and other containers used to wrap or ship the newspapers in transit, may be purchased exempt from tax by publishers and sellers other than publishers, if they intend to sell the newspapers.

(8) Publishers may purchase inserts exempt from tax as component parts of the newspapers (see section 144.030.2(2), RSMo).

(9) Depending on the method of sale, newspaper sales are subject to local tax. Vending machine sales are taxed at the rate in effect where the machine is located. Sales by a seller other than the publisher are taxed at the rate in effect at the seller's place of business within Missouri, or if the seller does not have a place of business in Missouri, then at the rate in effect at the publisher's place of business in Missouri. Sales by publishers through employees, mail, direct retail and agents are taxed at the rate in effect at the publisher's place of business within Missouri. Over-the-counter sales by independent businesses, such as newsstands and grocers, are taxed at the rate in effect at their places of business.

(10) Sales of newspapers which include delivery, handling and postage costs are taxed on

total gross receipts including delivery, handling and postage if title passes upon receipt of the newspaper (see 12 CSR 10-3.066).

*AUTHORITY: sections 144.010, 144.021 and 144.270, RSMo 1994. * Emergency rule filed Jan. 5, 1990, effective Jan. 15, 1990, expired May 15, 1990. Original rule filed Jan. 5, 1990, effective May 11, 1990.*

**Original authority: 144.010, RSMo 1939, amended 1941, 1943, 1945, 1947, 1974, 1975, 1977, 1978, 1979, 1981, 1985, 1988, 1993; 144.021, RSMo 1965, amended 1982; and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

Hearst Publication v. Director of Revenue (Mo. banc 1989). Sales of newspapers are not exempt as a service, but are taxable as a sale of tangible personal property. The exemption of newspapers from sales tax provided in 12 CSR 10-3.110, was found by the court to be beyond the scope of the statute and the authority of the director of revenue.

12 CSR 10-3.874 Questions and Answers on Taxation of Newspapers

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

(1) QUESTION: How is sales tax paid on newspapers?

(A) ANSWER: The answers to the questions in sections (2), (3) and (4) of this rule tell how the seller pays sales tax on newspapers, based upon how the sale is made.

(2) QUESTION: Must a newspaper publisher pay the sales tax on newspapers delivered by carriers?

(A) ANSWER: If the newspaper publisher contracts directly with the subscriber and the publisher bears the loss for noncollection, the publisher shall collect the tax.

(B) ANSWER: If the newspaper publisher sets or controls the seller's price (that is, the price the carrier charges), the carrier shall collect the tax, along with payment for the paper. The carrier then pays the tax to the publisher, who remits the tax to the department and receives a discount for timely payment.

(C) ANSWER: If a person other than the publisher (that is, the carrier) sets or controls his/her own price and bears the risk of loss for noncollection, the carrier is responsible for collecting and remitting state and local sales tax to the department.



(3) QUESTION: Must a newspaper publisher pay the sales tax on newspapers sold over-the-counter by retail stores?

(A) ANSWER: The retail store—such as a grocery, convenience store or pharmacy—is normally making the retail sale. The publisher should not pay the sales tax on these sales. The publisher should sell the newspapers to the retail store under a resale exemption certificate. The retail store shall collect and remit state and local sales tax on the sale of the newspaper.

(4) QUESTION: Must a newspaper publisher pay the sales tax on newspapers sold through vending machines?

(A) ANSWER: Section 144.012, RSMo provides that the owner of newspapers sold through vending machines is making the retail sale. Thus, whoever owns the newspaper must remit the tax. If the newspaper publisher owns the newspapers sold through vending machines, the publisher shall remit the state and local sales tax based on the location of the vending machine. If a person other than the publisher purchases papers from the publisher and places them in the vending machine, that person must remit state and local sales tax.

(5) QUESTION: If a newspaper publisher does not control the seller's price and does not bear the risk of loss for noncollection, then may the publisher require all of its carriers to register with the Department of Revenue and collect and remit the sales tax to the department?

(A) ANSWER: Yes. A newspaper publisher can sell newspapers to carriers on a sale for resale basis, if the conditions described in section (5) are met. The carriers must be registered to collect and remit the tax, and the publisher must obtain a resale sales exemption certificate from every carrier to which it makes tax-free sales. The method provided in newspaper regulation 12 CSR 10-3.872(3)(A) is for the convenience of publishers, carriers and the Department of Revenue.

(6) QUESTION: Can a newspaper publisher set the individual copy price so the price and tax equal a round amount?

(A) ANSWER: Yes. The publisher can set its individual copy sales price so the newspaper price and the tax combined equal a round or convenient amount (that is, 47¢ for the paper, 3¢ for the tax, 50¢ combined). The banner on the paper's front page may state one (1) price (the combined paper and tax amount), provided somewhere in the paper, preferably on the masthead, the paper price

and the amount are stated separately (see also answer to section (7)'s question).

(7) QUESTION: Can a publisher state one (1) individual copy price which includes different amounts of tax depending upon where the paper is sold?

(A) ANSWER: Yes. The publisher may set up flexible pricing structure so that the combined price and tax equal a desired amount, regardless of the local tax rate. For example, a paper sold in Columbia with a 6.675% tax rate may be priced at 47¢ and 3¢ tax to total 50¢. The same paper may be priced at 48¢ and 2¢ tax in rural Boone county, which has a 5.175% tax rate. The masthead may state that the paper is sold in different locations with varying sales tax rates.

(8) QUESTION: Given the answers to the questions in sections (2)–(7), on what price should sellers, other than the publisher, collect and remit tax?

(A) ANSWER: The seller should collect and remit tax on the advertised (front page banner) price, unless the seller sells at a different price. For example, if the newspaper banner says 50¢, and the seller sells the paper for 75¢, the seller should collect and remit tax on the 75¢.

(9) A carrier charges \$6 per month for a home-delivered subscription. Two questions—

(A) QUESTION: Can the carrier make the sales price equal a round amount?

1. ANSWER: The carrier can structure the sales price so the price and the tax combined equal a round amount. For example, \$5.65 per month for the paper, 35¢ for tax, \$6 combined.

(B) QUESTION: Does the carrier have to show the price and the tax separately on the sales receipt?

1. ANSWER: Yes. The sales receipt or stub needs to separately state the sales price and tax amount, or it shall be accompanied by a statement that sales tax is being charged.

(10) QUESTION: Same questions as subsections (9)(A) and (B) but the publisher is the seller.

(A) ANSWER: Same answers. The publisher can structure the sales price so the price and the tax combined equal a round amount. The sales receipt or stub needs to separately state the sales price and tax amount, or it shall be accompanied by a statement that sales tax is being charged.

(11) QUESTION: Is the postage cost element of a mail subscription subject to sales tax?

(A) ANSWER: It depends on how the sale is structured. The sales tax is levied on the seller's gross receipts from sale of the item. This includes postage unless title to the newspaper passes before the postage costs are incurred. If the sale is structured so title to the paper passes from the publisher or other seller to the subscriber before the newspaper is mailed, the postage cost is not subject to tax. This rule applies for all industries. The sales receipt or subscription contract clearly shall indicate where or when passage of title occurs, the sales price and either postage price or the statement that postage is separated from the sales price and is not subject to sales tax.

(12) The questions in sections (12)–(14) deal with vending machine sales. QUESTION: If a publisher has vending machines in locations with varying local tax rates, on what sales price should the publisher charge tax?

(A) ANSWER: Under section 144.012, RSMo, the tax on vending machine sales is a tax on the vendor's purchase of the goods or cost of the goods, not the ultimate sale transaction, therefore, the retail sale price of a vending machine transaction is irrelevant, except as the limit. If the publisher owns the vending machine and the newspaper sold in it, the publisher should accrue and remit sales tax on vending machine sales at one hundred thirty-five percent (135%) of the average wholesale price to other sellers, not to exceed one hundred percent (100%) of the retail sales price.

1. Example 1: Publisher X wholesales its paper to other retailers for 20¢. It also sells the paper in its own vending machines for 35¢. The publisher should accrue tax on one hundred thirty-five percent (135%) of the average wholesale price (20¢ × 135% = 27¢) because it is less than the vending machine price.

2. Example 2: Publisher Y wholesales its papers to other retailers for 20¢. It also sells the paper in its own vending machines for 25¢. The publisher should accrue tax on the 25¢ vending machine sales price because it is less than one hundred thirty-five percent (135%) of the average wholesale price (20¢ × 135% = 27¢).

(13) QUESTION: Are sales of newspapers through vending machines located on the premises of exempt organizations subject to tax?

(A) ANSWER: Generally, no. Not all not-for-profit organizations' premises qualify for tax-exempt vending operations. Under section 144.012, RSMo, only those organizations which are exempt under section



144.030.2(19), RSMo qualify for exempt vending. These organizations are public elementary and secondary schools and religious and charitable organizations. Vendors should obtain a copy of the organization's exemption letter prior to making tax-free vending transactions (see 12 CSR 10-3.862).

(14) QUESTION: At what tax rate should publishers or other vendors selling through vending machines self-accrue local sales tax?

(A) ANSWER: The rate in effect at the machine's location. Publishers and other persons selling newspapers through vending machines should register with the Department of Revenue to remit tax for each city and county in which they will make taxable vending machine sales. The seller's records, by an accounting method approved by the department, should indicate the volume of newspapers sold at each machine location.

(15) QUESTION: A newspaper publisher periodically prints extra copies of a newspaper for free distribution (that is, each Wednesday the publisher distributes a copy to every household in the city, whether a subscriber or not). What are the sales tax consequences of this type of transaction?

(A) ANSWER: Since the extra copies are not sold, no tax is due on their distribution. However, the publisher will owe tax on the purchase of the materials which were consumed in the production of the newspaper. If the free copies meet the definition of a newspaper, no tax is due on the purchase of the newsprint. However, the publisher should self-accrue sales or use tax as appropriate on any other materials used to produce and distribute the free papers, including ink, rubber bands, rain bags and the like.

(16) QUESTION: Publisher A prints a newspaper for publisher B and sells it to publisher B. Publisher B distributes the newspaper free of charge. What is the tax liability?

(A) ANSWER: Assuming that title to the newsprint transfers in a retail sale between publisher A and publisher B, publisher A should collect and remit sales tax on its gross sales to publisher B.

(17) QUESTION: Publisher A prints a newspaper for publisher B. Publisher B intends to sell the paper at retail. What is the tax liability?

(A) ANSWER: Publisher A should obtain a resale exemption certificate from B and not charge sales tax on its sales of the paper to B. Publisher B is liable to collect sales tax on its sales of the paper.

(18) QUESTION: Newspaper publisher A prints a one hundred percent (100%) advertising shopper which it distributes for free. What is publisher A's tax liability?

(A) ANSWER: The publisher is liable for sales or use tax on the purchase of all materials used to print the shopper, including the paper it is printed on.

(19) QUESTION: Newspaper publisher A prints a one hundred percent (100%) advertising shopper which it sells at retail. What is publisher A's tax liability?

(A) ANSWER: The seller is responsible for collecting and remitting tax on the gross receipts from retail sales of the shopper. The publisher may purchase all of the materials which become component parts of the shopper exempt from sales tax.

(20) QUESTION: Publisher A prints a shopper for publisher B and sells it to publisher B. Publisher B distributes the shopper free of charge. What is the tax liability?

(A) ANSWER: Publisher A must collect and remit sales tax on its gross receipts from sale of the shopper to publisher B. Publisher A should purchase the materials used to print the shopper under a resale exemption certificate.

(21) QUESTION: Publisher A prints a shopper for publisher B and sells it to publisher B. Publisher B sells the shopper at retail. What is the tax liability?

(A) ANSWER: Publisher A should obtain a resale exemption certificate from publisher B and sell publisher B the shopper tax free. Publisher B should collect and remit sales tax on its gross receipts from retail sales of the shopper. Publisher A should purchase the materials used to print the shopper under a resale exemption certificate.

(22) QUESTION: Newspaper publisher X prints an advertising supplement for a grocery store. At the direction of the grocery store owner, publisher X does four (4) different things with the supplements. Where does the incidence of tax rest in each of these cases?

(A) EXAMPLE: Some of the supplements are inserted into publisher X's newspaper.

1. ANSWER: The supplements which become part of publisher X's paper are not taxable because they become a component part of the newspaper which is sold at retail. However, if the supplements will be inserted in a free distribution edition of the paper (see section (16)), the publisher should charge the grocery store sales tax on the portion which will be distributed for free.

(B) EXAMPLE: Some of the supplements are shipped to another newspaper not owned by X for insertion in that newspaper which is sold at retail.

1. ANSWER: The grocery store should issue a component part exemption on the purchase of these supplements because they will be resold by the second publisher (that is, a pass through of the exemption).

(C) EXAMPLE: Some are given to the grocery store owner who gives them out in the store.

1. ANSWER: Publisher X should collect and remit tax on the sale of supplements which are to be distributed in the grocery store.

(D) EXAMPLE: Some are mailed to the grocery store's customers by publisher X using a mailing list provided by the grocery store.

1. ANSWER: Publisher X should collect and remit sales tax on the supplements which are mailed to persons on the grocery store's mailing list.

(23) QUESTION: Does a newspaper publisher have to collect and remit Missouri sales tax on newspaper subscriptions sold to out-of-state subscribers?

(A) ANSWER: No. If the title to the paper passes at the out-of-state location, the sale is an export sale and not subject to Missouri sales tax.

(24) QUESTION: A newspaper publisher prints a newspaper in Missouri. Some of the newspapers are sent to Kansas for free distribution. What is the tax consequence of this transaction?

(A) ANSWER: If the publisher is making the free distribution, it should self-accrue sales or use tax on the portion of its material purchases (other than newsprint) which go into the free distribution papers. If the publisher is selling the papers to another publisher who makes the free distribution, the tax depends on where title passes. If title passes to the second publisher in Missouri, then the sale is taxable in Missouri. If title passes to the second publisher in Kansas, then the sale is not taxable in Missouri.

(25) QUESTION: Missouri publisher prints a newspaper in Kansas for distribution in Kansas. Does it have any Missouri sales/use tax liability?

(A) ANSWER: No. Since the newspaper is printed in Kansas and distributed only in Kansas, no retail sale takes place in Missouri.

(26) QUESTION: A newspaper publisher has mail subscriptions. After printing the paper,



the publisher labels and mails the papers. Can the publisher segregate labeling or handling charges to make these not part of the taxable sale amount?

(A) ANSWER: No. Labeling and handling are services necessary to get the paper ready to mail to the subscriber. Title cannot pass until after these services are complete and tax is due on these charges.

(27) QUESTION: What about newspapers published or sold by or to churches and other charitable and religious organizations?

(A) ANSWER: Review the organization's exemption letter for the exemption status. Churches or other charitable and religious organizations which are exempt on sales and purchases do not have to collect tax on sales of their newspapers or periodicals.

(28) QUESTION: A nonexempt organization's dues include a subscription fee for a newspaper, newsletter or other periodical. To what extent are these amounts taxable?

(A) ANSWER: If the nonexempt organization sells the newspaper or other periodical to nonmembers, these sales are taxable. If the nonexempt organization segregates the dues from the subscription price, then the gross receipts from subscription sales are taxable. If the nonexempt organization does not segregate the dues from the subscription price, the organization is not reselling the paper or periodical. Therefore, it will have to pay sales or use tax as appropriate on the purchase of the newspaper or periodical from the printer.

AUTHORITY: sections 144.010, 144.021 and 144.270, RSMo 1994. Emergency rule filed Jan. 23, 1990, effective Feb. 2, 1990, expired June 1, 1990. Original rule filed Jan. 23, 1990, effective May 11, 1990.*

**Original authority: 144.010, RSMo 1939, amended 1941, 1943, 1945, 1947, 1974, 1975, 1977, 1978, 1979, 1981, 1985, 1988, 1993; 144.021, RSMo 1965, amended 1982; and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

Hearst Publication v. Director of Revenue (Mo. banc 1989). Sales of newspapers are not exempt as a service, but are taxable as a sale of tangible personal property. The exemption of newspapers from sales tax provided in 12 CSR 10-3.110, was found by the court to be beyond the scope of the statute and the authority of the director of revenue.

12 CSR 10-3.876 Taxation of Sod Businesses

PURPOSE: This rule interprets the sales tax

law as it applies to the production, installation and retail sale of sod.

(1) Definitions.

(A) Harvester—any person who severs growing grass from the earth for resale or otherwise as sod.

(B) Installer—any person engaged in the business of purchasing sod from either a sod producer or harvester for resale or use in a contract to improve real property.

(C) Integrated sod producer—any person who grows, harvests and installs sod under contracts for improvements to real property.

(D) Sod producer—any person engaged in the business of planting and cultivating grass for resale or otherwise as sod.

(2) Transactions Subject to Tax. The retail sale of sod is a taxable sale of tangible personal property. Sellers of sod are sellers for purposes of the sales and use tax laws in Chapter 144, RSMo and are subject to the rules applicable to sellers.

(A) Sod producers not acting as contractors are subject to sales tax on their sales of sod to any purchaser unless the sod producers receive from the purchaser an exemption certificate for resale or otherwise.

(B) Harvesters who purchase sod for resale from sod producers are subject to sales tax on their sales of sod to any purchaser unless the harvester receives from the purchaser an exemption certificate for resale or otherwise.

(C) Installers who purchase sod to improve real property in their capacity as contractors, subcontractors or the like are subject to sales tax on their purchases of sod. Under the sales tax law, the person who incorporates tangible personal property into real property as part of an improvement to real property is deemed to be the final user and consumer and must pay tax on his/her purchases.

(D) Installers who purchase sod for resale and not in their capacity as contractors, subcontractors or the like are subject to sales tax on their sales of sod to consumers. Any separately stated charges by the installer for labor to install the sod are not subject to tax if title to the sod passes prior to installation. The installer should furnish a certificate of exemption for resale to his/her sod supplier for these transactions.

(3) Amounts Subject to Tax. Sales of sod by sod producers, harvesters or other retail sellers are subject to tax upon total gross receipts. If the sale of the sod includes delivery and handling charges, the delivery charges are taxable if title to the sod passes at the destination point. If title passes at shipping point, the delivery and handling charges

are not taxable if they are separately stated to the purchaser (see 12 CSR 10-3.066).

(4) Related Exemptions to Sales Tax.

(A) Retail sales to organizations exempt pursuant to section 144.030.2(19), (20) and (22), RSMo, including governmental agencies, are exempt from tax if the purchases are billed to and paid by the exempt entity and not by the contractor.

(B) Seed, lime and fertilizer purchased by sod producers are exempt from sales tax if the sod is ultimately sold at retail.

(C) Purchases of machinery and equipment by sod producers are exempt if the sod is grown to be sold ultimately at retail.

(D) Purchases of seed, fertilizer and limestone are not exempt if the sod is grown for use by an integrated producer in its capacity as a contractor.

(5) Example: The sod producer grows, harvests and sells sod to installers. Terms are free on board (FOB) the farm and delivery charges to installers' worksites are separately stated. Producer invoices installer for two thousand (2,000) yards of sod at fifty-five cents (55¢) per square yard and separately charges fifty dollars (\$50) for delivery. Sales tax is due at the appropriate rate on receipts of one thousand one hundred dollars (\$1,100) (2,000 × 55¢).

(6) Example: The sod producer sells sod to harvester who harvests sod and resells the sod to installers. Harvester furnishes sod producer an Exemption for Resale Certificate. Sod producer does not collect sales tax from harvester. Harvester charges sales tax on gross amount of the sales price to this customer. If harvester purchases two thousand (2,000) square yards of sod from sod producer at thirty cents (30¢) per square yard and sells it to installers for sixty cents (60¢) per square yard, sales tax is due on the one thousand two hundred dollars (\$1,200) (2,000 × 60¢) of receipts. Delivery charges, if separately stated, are not taxable.

(7) Example: Installer purchases two thousand (2,000) square yards of sod FOB the farm from sod producer. Installer has agreed with its customer to sell customer sod for fifty-five cents (55¢) per square yard and separately agreed to install the sod for fifteen cents (15¢) per square yard. Installer should provide sod producer with a Certificate of Exemption for Resale and charge sales tax to its customer on one thousand one hundred dollars (\$1,100) at the appropriate rate.



(8) Example: Installer purchases two thousand (2,000) square yards of sod as personal property from producer for thirty cents (30¢) per square yard. Installer contracts separately with a harvester for cutting and delivery of sod for twenty cents (20) per square yard. Installer contracts with his/her customer for installation of sod at eighty cents (80¢) per square yard. Producer should collect sales tax from installer at the appropriate rate on six hundred dollars (\$600) (2,000 × 30¢) of receipts.

(9) Example: An integrated sod producer grows, harvests and installs two thousand (2,000) square yards of sod as part of a contract to improve real property. The contract calls for a price of one dollar (\$1) per square yard of sod installed. The sod grower needs only to pay tax on the seed, fertilizer and limestone. The two thousand dollar (\$2,000) receipts from the installation contract are not taxable.

(10) Example: An integrated sod producer who normally acts as a contractor occasionally sells sod at retail to homeowners. In these retail sales cases, the integrated operator should charge tax on the gross receipts of the sale to the homeowner and purchase the seed, fertilizer and limestone tax exempt pursuant to section 144.030.2(1), RSMo.

(11) Example: An integrated sod producer acting as a contractor is able to have two (2) cuttings of sod with each seeding. The first cutting results from the seeding and the second cutting results from regrowth. The integrated sod producer has no taxable event on those cuttings which are produced from regrowth.

AUTHORITY: section 144.270, RSMo 1994.*
Original rule filed July 2, 1990, effective Dec. 31, 1990.

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

12 CSR 10-3.878 Certificate of Deposit (Rescinded March 30, 2001)

AUTHORITY: sections 144.087 and 144.270, RSMo 1994. Emergency rule filed Sept. 18, 1990, effective Sept. 28, 1990, expired Jan. 25, 1991. Original rule filed Sept. 18, 1990, effective Feb. 14, 1991. Amended: Filed Feb. 4, 1991, effective June 10, 1991. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.

12 CSR 10-3.880 Sales of Postage Stamps

PURPOSE: This rule clarifies the application of the sales tax to the sale of postage stamps.

(1) Sales of uncanceled United States postage stamps, for purposes other than philatelic or investment, which are used for postage are considered sales of services and not subject to sales tax.

(2) Sales of uncanceled United States and foreign postage stamps for philatelic or investment purposes are deemed to be sales of tangible personal property and are subject to sales tax. Sale prices over one hundred fifty percent (150%) of the face value of the stamp shall be construed as prima facie evidence of a sale for philatelic or investment purposes.

(3) All sales of cancelled postage stamps, regardless of the sales price, are deemed to be sales of tangible personal property and are subject to sales tax.

AUTHORITY: section 144.270, RSMo 1994.*
Original rule filed Oct. 16, 1990, effective March 14, 1991.

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

12 CSR 10-3.882 Accrual Basis Reporting (Rescinded October 30, 2001)

AUTHORITY: section 144.270, RSMo 1994.
Original rule filed Oct. 25, 1990, effective March 14, 1991. Rescinded: Filed April 5, 2001, effective Oct. 30, 2001.

12 CSR 10-3.884 Basic Steelmaking Exemption—Sales Tax (Rescinded March 30, 2011)

AUTHORITY: section 144.270, RSMo 1994.
Original rule filed Nov. 15, 1990, effective June 10, 1991. Rescinded: Filed Oct. 7, 2010, effective March 30, 2011.

12 CSR 10-3.886 Exemption For Construction Materials Sold to Exempt Entities (Rescinded March 30, 2011)

AUTHORITY: sections 144.062 and 144.270, RSMo 1994. Emergency rule filed Oct. 16, 1991, effective Oct. 26, 1991, expired Feb. 22, 1992. Original rule filed June 18, 1991, effective Jan. 13, 1992. 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 April 30, 1995. Rescinded: Filed Oct. 7, 2010, effective March 30, 2011.

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 10-3.888 Sales “In Commerce” Between Missouri and Other States (Rescinded July 30, 2011)

AUTHORITY: section 144.270, RSMo 1994.
Original rule filed Jan. 31, 1992, effective Sept. 6, 1992. Rescinded: Filed Jan. 24, 2011, effective July 30, 2011.

Amoco Oil Company v. Director of Revenue, Case No. 89-001011RS (A.H.C. 01/07/91). Sales of goods were exempt as in commerce where title passed to the buyer upon delivery in Missouri to a carrier, common or contract, for shipment out-of-state. In order for a Missouri retail sale to be exempt as being “in commerce,” a component of the sales transaction must depend upon the importation or the exportation of the goods from or to another state.

Western Trailer Service, Inc. v. Lepage, 575 SW2d 173 (Mo. banc 1978). Under contract, employees of a trailer company went to Kansas, picked up trailers and brought them into the state and, after repairs were made and repair parts installed, the trailers were returned under contract to Kansas by trailer company employees. Importation of the trailers from Kansas to Missouri was a component part of the transaction. The retail sales were made in commerce between Missouri and Kansas.

Overland Steel, Inc. v. Director of Revenue, 647 SW2d 535 (Mo. banc 1983). Overland Steel was both a retailer and a contractor. Overland purchased materials which were ultimately installed for Kansas customers. These materials were not resold by Overland



but were consumed by the corporation in its capacity as a contractor. The sale of materials from the manufacturer to Overland was complete before Overland entered into the Kansas construction contracts. There was no evidence indicating transportation of the goods to Kansas was an integral part of the sale.

Bratton Corporation v. Director of Revenue, 783 SW2d 891 (Mo. banc 1990). Goods delivered to a corporation in Missouri upon purchase from Missouri vendors were not “in commerce” and could not avoid the sales tax, despite buyer’s intention of shipping the goods out-of-state shortly after delivery.

Metro Crown International, Inc. v. Director of Revenue, Case No. 89-000904RS, (A.H.C. 04/20/90). Sales were Missouri retail sales where buyer took possession of goods from seller in Missouri, despite contract provision that title would not pass until arrival out-of-state. Tax liability depends on the economic reality of the transaction, not on the legal fictions of boilerplate contract provisions.

12 CSR 10-3.890 Area Betterment, Tourism or Marketing Program Fees To Be Included As Taxable Gross Receipts
(Rescinded September 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 30, 1992, effective June 7, 1993. Rescinded: Filed March 28, 2001, effective Sept. 30, 2001.

12 CSR 10-3.892 Light Aircraft—Light Aircraft Kits
(Rescinded May 30, 2006)

AUTHORITY: section 144.270, RSMo 1994. Emergency rule 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. Original rule filed Aug. 18, 1994, effective Feb. 26, 1995. Rescinded: Filed Nov. 1, 2005, effective May 30, 2006.

12 CSR 10-3.894 Animal Bedding—Exemption

PURPOSE: This rule interprets the sales tax law as it applies to animal bedding.

(1) All sales of bedding used in the production of livestock or poultry for food or fiber are exempt from sales tax. Examples of bed-

ding may include, but are not limited to, wood shavings, straw and shredded paper.

*AUTHORITY: section 144.270, RSMo 1994. * Emergency rule filed Aug. 18, 1994, effective Aug. 28, 1994, expires Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Original rule filed Aug. 18, 1994, effective Feb. 26, 1995.*

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

12 CSR 10-3.896 Auctioneers, Brokers and Agents
(Rescinded March 30, 2011)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 28, 1995, effective May 30, 1996. Rescinded: Filed Oct. 7, 2010, effective March 30, 2011.

12 CSR 10-3.898 Non-Reusable and Reusable Items
(Rescinded March 30, 2001)

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Nov. 26, 1997, effective May 30, 1998. Rescinded: Filed Sept. 27, 2000, effective March 30, 2001.