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

Title		Page
12 CSR 10-3.002	Rules	17
12 CSR 10-3.003	Rulings	17
12 CSR 10-3.004	Isolated or Occasional Sales	17
12 CSR 10-3.005	Isolated or Occasional Sales by Businesses	18
12 CSR 10-3.006	Isolated or Occasional Sales vs. Doing Business—Examples	18
12 CSR 10-3.007	Partial Liquidation of Trade or Business	19
12 CSR 10-3.008	Manufacturers and Wholesalers	19
12 CSR 10-3.010	Fireworks and Other Seasonal Businesses	19
12 CSR 10-3.012	Sellers Subject To Sales Tax (Rescinded August 9, 1993)	19
12 CSR 10-3.014	Auctions Disclosed Principal (Rescinded September 11, 1983)	20
12 CSR 10-3.016	Consignment Sales (Rescinded December 11, 1980)	20
12 CSR 10-3.017	Ticket Sales	20
12 CSR 10-3.018	Truckers Engaged in Retail Business	21
12 CSR 10-3.020	Finance Charges	21
12 CSR 10-3.022	Cash and Trade Discounts	21
12 CSR 10-3.023	Rebates	21
12 CSR 10-3.024	Returned Goods	21
12 CSR 10-3.026	Leases or Rentals Outside Missouri (Rescinded December 11, 1980)	22

12 CSR 10-3.027 Quarterly-Monthly Period Reporting and Remitting Sales Tax (Moved to 12 CSR 10-3.026) 22

12 CSR 10-3.028 Construction Contractors 22

12 CSR 10-3.030 Construction Aggregate 23

12 CSR 10-3.031 Dual Operators 24

12 CSR 10-3.032 Fabrication or Processing of Tangible Personal Property 24

12 CSR 10-3.034 Modular or Sectional Homes 24

12 CSR 10-3.036 Sales Made by Employers to Employees 25

12 CSR 10-3.038 Promotional Gifts and Premiums 25

12 CSR 10-3.040 Premiums and Gifts (Rescinded December 11, 1980) 26

12 CSR 10-3.042 State or Federal Concessionaires 26

12 CSR 10-3.044 Labor or Services Rendered 26

12 CSR 10-3.046 Caterers and Mandatory Gratuities 26

12 CSR 10-3.048 Clubs and Other Organizations Operating Places of Amusement 27

12 CSR 10-3.050 Drinks and Beverages 28

12 CSR 10-3.052 Sale of Ice 28

12 CSR 10-3.054 Warehousemen 29

12 CSR 10-3.056 Retreading Tires 29

12 CSR 10-3.058 Automotive Refinishers and Painters 29

12 CSR 10-3.060 Memorial Stones 30

12 CSR 10-3.062 Maintenance or Service Contracts Without Parts 30

12 CSR 10-3.064 Maintenance or Service Contracts With Parts 30

12 CSR 10-3.066 Delivery, Freight and Transportation Charges—Sales Tax 31

12 CSR 10-3.068 Freight and Transportation Charges (Rescinded December 11, 1980) 31

12 CSR 10-3.070 Service-Oriented Industries 31

12 CSR 10-3.072	Repair Industries	32
12 CSR 10-3.074	Garages, Body and Automotive Shops and Service Stations	32
12 CSR 10-3.076	Used Car Dealers	32
12 CSR 10-3.078	Laundries and Dry Cleaners	32
12 CSR 10-3.080	Ceramic Shops	33
12 CSR 10-3.082	Furniture Repairers and Upholsterers	33
12 CSR 10-3.084	Fur and Garment Repairers	33
12 CSR 10-3.086	Bookbinders, Papercutters, Etc.	33
12 CSR 10-3.088	Photographers, Photofinishers and Photoengravers	34
12 CSR 10-3.090	Watch and Jewelry Repairers	35
12 CSR 10-3.092	Painters	35
12 CSR 10-3.094	Interior or Exterior Decorators	35
12 CSR 10-3.096	Janitorial Services	35
12 CSR 10-3.098	Drugs and Medicines	35
12 CSR 10-3.100	Barber and Beauty Shops	35
12 CSR 10-3.102	Sheet Metal, Iron and Cabinet Works	36
12 CSR 10-3.104	Vending Machines Defined (Rescinded December 11, 1980)	36
12 CSR 10-3.106	Vending Machines on Premises of Owner	36
12 CSR 10-3.108	Vending Machines on Premises Other Than Owner	37
12 CSR 10-3.110	Publishers of Newspapers (Rescinded June 11, 1990)	37
12 CSR 10-3.112	Newspaper Defined	37
12 CSR 10-3.114	Periodicals, Magazines and Other Printed Matter (Rescinded June 11, 1990)	38
12 CSR 10-3.116	Service Station Ownership	38
12 CSR 10-3.118	Leased Departments or Space	38
12 **CSR 10-3.120**	Food Stamps and W.I.C. (Women, Infants and Children) Vouchers	38

12 CSR 10-3.122 Consideration Other Than Money, Except for Trade-Ins 38

12 CSR 10-3.124 Coins and Bullion 38

12 CSR 10-3.126 Federal Manufacturer's Excise Tax 39

12 CSR 10-3.128 Salvage Companies 39

12 CSR 10-3.130 Assignments and Bankruptcies 39

12 CSR 10-3.131 Change of State Sales Tax Rate 40

12 CSR 10-3.132 Purchaser Includes (Rescinded December 11, 1980) 40

12 CSR 10-3.134 Purchaser's Responsibilities 40

12 CSR 10-3.136 Consideration Other Than Money 41

12 CSR 10-3.138 Consideration Less Than Fair Market Value 41

12 CSR 10-3.140 Interdepartmental Transfers 41

12 CSR 10-3.142 Trading Stamps 41

12 CSR 10-3.144 Redemption of Coupons 42

12 CSR 10-3.146 Core Deposits 42

12 CSR 10-3.148 When a Sale Consummates 42

12 CSR 10-3.150 Guidelines on When Title Passes 42

12 CSR 10-3.152 Physicians and Dentists 43

12 CSR 10-3.154 Optometrists, Ophthalmologists and Opticians 44

12 CSR 10-3.156 Dental Laboratories 44

12 CSR 10-3.158 Sale on Installed Basis 44

12 CSR 10-3.160 Funeral Receipts 45

12 CSR 10-3.162 Pawnbrokers 45

12 CSR 10-3.164 Installment Sales and Repossessions 45

12 CSR 10-3.166 Seller of Boats 46

12 CSR 10-3.167 Sales of Food and Beverages to and by Public Carriers 46

12 CSR 10-3.168 Documentation Required 46

12 CSR 10-3.170 Computer Printouts (Rescinded November 12, 1977) 47

12 CSR 10-3.172 Advertising Signs 47

12 CSR 10-3.174 Stolen or Destroyed Property 47

12 CSR 10-3.176 Fees Paid in or to Places of Amusement, Entertainment or Recreation 48

12 CSR 10-3.178 Dues are not Admissions (Rescinded April 29, 1991) 51

12 CSR 10-3.179 Separate Taxable Transactions Involving the Same Tangible Personal Property and the Same Taxpayer 51

12 CSR 10-3.182 Excursions 51

12 CSR 10-3.184 Electricity, Water and Gas 52

12 CSR 10-3.186 Water Haulers 53

12 CSR 10-3.188 Telephone Service 53

12 CSR 10-3.192 Seller's Responsibilities 55

12 CSR 10-3.194 Multistate Statutes 56

12 CSR 10-3.196 Nonreturnable Containers 56

12 CSR 10-3.198 Returnable Containers 57

12 CSR 10-3.200 Wrapping Materials 57

12 CSR 10-3.202 Pallets 57

12 CSR 10-3.204 Paper Towels, Sales Slips 58

12 CSR 10-3.206 Bottle Caps and Crowns 58

12 CSR 10-3.208 Crates and Cartons 58

12 CSR 10-3.210 Seller Must Charge Correct Rate 58

12 CSR 10-3.212 Rooms, Meals and Drinks 59

12 CSR 10-3.214 Complimentary Rooms, Meals and Drinks 59

12 CSR 10-3.216 Permanent Resident Defined 59

12 CSR 10-3.218	Students	59
12 CSR 10-3.220	Sales of Accommodations to Exempt Organizations	60
12 CSR 10-3.222	Transportation Fares	60
12 CSR 10-3.224	Effective Date of Option (Rescinded December 11, 1980)	60
12 CSR 10-3.226	Lease or Rental	60
12 CSR 10-3.228	Lessors-Renters Include	61
12 CSR 10-3.230	Repair Parts for Leased or Rented Equipment	61
12 CSR 10-3.232	Maintenance Charges for Leased or Rented Equipment	61
12 CSR 10-3.233	Export Sales	61
12 CSR 10-3.234	Permit Required (Rescinded December 11, 1980)	62
12 CSR 10-3.236	Domicile of Motor Vehicles (Rescinded December 11, 1980)	62
12 CSR 10-3.238	Leasing Motor Vehicles for Release (Rescinded December 11, 1980)	62
12 CSR 10-3.240	Meal Tickets	62
12 CSR 10-3.242	Gross Sales Reporting Method (Rescinded March 14, 1991)	62
12 CSR 10-3.244	Trade-Ins	62
12 CSR 10-3.245	Exempt Federal, State Agency or Missouri Political Subdivision General Requirements	62
12 CSR 10-3.246	General Examples (Rescinded December 11, 1980)	63
12 CSR 10-3.247	Information Required to be Filed by a Federal, State Agency or Missouri Political Subdivision Claiming Exemption	63
12 CSR 10-3.248	Sales to the United States Government	63
12 CSR 10-3.249	Sales to Foreign Diplomats	64
12 CSR 10-3.250	Sales to Missouri	64
12 CSR 10-3.252	Hunting and Fishing Licenses	65
12 CSR 10-3.254	Sales to Missouri Political Subdivisions	65
12 CSR 10-3.256	Sales Other Than Missouri or its Political Subdivisions	65

12 CSR 10-3.258 Petty Cash Funds....65

12 CSR 10-3.260 Nonappropriated Activities of Military Services....65

12 CSR 10-3.262 Government Suppliers and Contractors....66

12 CSR 10-3.264 Repossessed Tangible Personal Property....66

12 CSR 10-3.266 Sales to National Banks and Other Financial Institutions....66

12 CSR 10-3.268 General Rule (Rescinded December 11, 1980)....67

12 CSR 10-3.270 Carbon Dioxide Gas....67

12 CSR 10-3.272 Motor Fuel and Other Fuels....67

12 CSR 10-3.274 Farm Machinery and Equipment....68

12 CSR 10-3.276 Sales of Baling Wire, Baling Twine and Binder Twine (Rescinded June 28, 1986)....71

12 CSR 10-3.278 Agricultural Feed and Feed Additives....71

12 CSR 10-3.280 Sale of Agricultural Products by the Producer....71

12 CSR 10-3.282 Sales of Seed, Pesticides and Fertilizers....71

12 CSR 10-3.284 Poultry Defined....71

12 CSR 10-3.286 Livestock Defined....72

12 CSR 10-3.288 Florists....72

12 CSR 10-3.290 Sellers of Poultry....72

12 CSR 10-3.292 Ingredients or Component Parts....73

12 CSR 10-3.294 Component Parts....75

12 CSR 10-3.296 Manufacturing Defined (Rescinded December 11, 1980)....76

12 CSR 10-3.298 Electrical Appliance Manufacturers (Rescinded December 11, 1980)....77

12 CSR 10-3.300 Common Carriers....77

12 CSR 10-3.302 Airline Defined (Rescinded December 11, 1980)....77

12 CSR 10-3.304 Common Carrier Exemption Certificates....77

12 CSR 10-3.306 Aircraft (Rescinded December 11, 1980) 77

12 CSR 10-3.308 Boat Manufacturing Equipment (Rescinded December 11, 1980) 77

12 CSR 10-3.310 Truckers (Rescinded December 11, 1980) 77

12 CSR 10-3.312 Local Delivery and Terminal Equipment (Rescinded December 11, 1980) 77

12 CSR 10-3.314 Patterns and Dies (Rescinded December 11, 1980) 77

12 CSR 10-3.316 Replacement Machinery and Equipment 77

12 CSR 10-3.318 Ceramic Greenware Molds 78

12 CSR 10-3.320 New or Expanded Plant 78

12 CSR 10-3.324 Rock Quarries 80

12 CSR 10-3.326 Direct Use 81

12 CSR 10-3.327 Exempt Machinery 81

12 CSR 10-3.328 Contractor Conditions (Rescinded December 11, 1980) 82

12 CSR 10-3.330 Realty 82

12 CSR 10-3.332 United States Government Suppliers 82

12 CSR 10-3.333 Cities or Counties May Impose Sales Tax on Domestic Utilities 83

12 CSR 10-3.334 Breeding Defined (Rescinded December 11, 1980) 83

12 CSR 10-3.336 Animals Purchased for Feeding or Breeding Purposes 83

12 CSR 10-3.340 Newsprint (Rescinded June 11, 1990) 84

12 CSR 10-3.342 Books, Magazines and Periodicals (Rescinded December 11, 1980) 84

12 CSR 10-3.344 Newspaper Sales (Rescinded December 11, 1980) 84

12 CSR 10-3.346 Printing Equipment (Rescinded December 11, 1980) 84

12 CSR 10-3.348 Printers 84

12 CSR 10-3.350 Movies, Records and Soundtracks 84

12 CSR 10-3.352 Recording Devices 85

12 CSR 10-3.354 Pipeline Pumping Equipment 85

12 CSR 10-3.356 Railroad Rolling Stock 85

12 CSR 10-3.358 Electrical Energy 85

12 CSR 10-3.360 Electrical Energy Used in Manufacturing (Rescinded December 11, 1980) 86

12 CSR 10-3.362 Primary and Secondary Defined (Rescinded December 11, 1980) 86

12 CSR 10-3.364 Cost of Production Defined (Rescinded December 11, 1980) 86

12 CSR 10-3.366 Authorization Required (Rescinded December 11, 1980) 86

12 CSR 10-3.368 Air Pollution Equipment 86

12 CSR 10-3.370 Water Pollution 86

12 CSR 10-3.372 Water or Air Pollution Installation Contractor 86

12 CSR 10-3.374 Materials Not Exempt (Rescinded December 11, 1980) 87

12 CSR 10-3.376 Rural Water Districts 87

12 CSR 10-3.378 Defining Charitable (Rescinded December 11, 1980) 87

12 CSR 10-3.380 Operating at Public Expense (Rescinded December 11, 1980) 87

12 CSR 10-3.382 Sales Made to and by Exempt Organizations 87

12 CSR 10-3.384 Sales by Religious, Charitable, Civic, Social, Service and Fraternal Organizations at Community Events (Rescinded February 11, 1985) 88

12 CSR 10-3.386 Application for Exemption (Rescinded February 11, 1985) 88

12 CSR 10-3.388 Construction Materials 88

12 CSR 10-3.390 Sales Made by and to Elementary and Secondary Schools (Rescinded December 11, 1980) 89

12 CSR 10-3.392 Defining Civic (Rescinded December 11, 1980) 89

12 CSR 10-3.394 Nonprofit Organization (Rescinded December 11, 1980) 89

12 CSR 10-3.396 Social and Fraternal Organizations (Rescinded December 11, 1980) 89

12 CSR 10-3.398 Auxiliary Organizations (Rescinded December 11, 1980) 89

12 CSR 10-3.400 Parent-Teacher Associations (Rescinded December 11, 1980) 89

12 CSR 10-3.402 Boy Scouts and Girl Scouts (Rescinded December 11, 1980) 89

12 CSR 10-3.404 Cafeterias and Dining Halls 89
12 CSR 10-3.406 Caterers or Concessionaires 89
12 CSR 10-3.408 Educational Institution's Sales (Rescinded December 11, 1980) 89
12 CSR 10-3.410 Junior Colleges (Rescinded December 11, 1980) 89
12 CSR 10-3.412 Higher Education (Rescinded December 11, 1980) 89
12 CSR 10-3.414 Yearbook Sales 89
12 CSR 10-3.416 Eleemosynary Institutions Defined (Rescinded December 11, 1980) 90
12 CSR 10-3.418 Fraternities and Sororities (Rescinded December 11, 1980) 90
12 CSR 10-3.420 YMCA and YWCA Organizations (Rescinded December 11, 1980) 90
12 CSR 10-3.422 Canteens and Gift Shops 90
12 CSR 10-3.424 Lease and Rental (Rescinded December 11, 1976) 90
12 CSR 10-3.426 Sales of Aircraft 90
12 CSR 10-3.428 Cigarette and Other Tobacco Products Sales 90
12 CSR 10-3.430 Purchaser to Pay the Tax (Rescinded December 11, 1980) 90
12 CSR 10-3.431 Handicraft Items Made by Senior Citizens 91
12 CSR 10-3.432 Sale of Prescription Drugs (Rescinded December 11, 1980) 91
12 CSR 10-3.434 Motor Vehicle and Trailer Defined 91
12 CSR 10-3.436 Manufactured Homes 91
12 CSR 10-3.438 Tangible Personal Property Mounted on Motor Vehicles 91
12 CSR 10-3.440 Automobiles (Rescinded December 11, 1980) 92
12 CSR 10-3.442 Automotive Demonstrators (Rescinded December 11, 1980) 93
12 CSR 10-3.443 Motor Vehicle Leasing Divisions 93
12 CSR 10-3.444 Collection of Tax on Vehicles 93
12 CSR 10-3.446 Motor Vehicle Leasing Companies 93
12 CSR 10-3.448 Annual Permit Renewal (Rescinded December 11, 1980) 93

12 CSR 10-3.452 Mailing of Returns 93

12 CSR 10-3.454 No Return, No Excuse—Return Required Even if No Sales Made....93

12 CSR 10-3.456 Calendar Quarter Defined 93

12 CSR 10-3.458 Aggregate Amount Defined (Rescinded December 11, 1980) 94

12 CSR 10-3.460 Return Required 94

12 CSR 10-3.462 Annual Filing 94

12 CSR 10-3.464 Tax Includes....94

12 CSR 10-3.466 Revocation Orders....94

12 CSR 10-3.468 Retail Sales Tax License Necessary....95

12 CSR 10-3.470 Consumer Cooperatives....95

12 CSR 10-3.471 Type of Bond 95

12 CSR 10-3.472 General Bond Examples 95

12 CSR 10-3.474 Computing a Bond....96

12 CSR 10-3.476 Replacing or Applying for Return of Bond....97

12 CSR 10-3.478 Bond Descriptions 97

12 CSR 10-3.479 Replacement of Bonds Issued by Suspended Surety Companies....97

12 CSR 10-3.480 Applicant Defined (Rescinded December 11, 1980)....97

12 CSR 10-3.482 Filing (Rescinded December 11, 1980) 97

12 CSR 10-3.484 Returns Required Even if No Sales Made (Rescinded January 12, 1985)....97

12 CSR 10-3.486 Confidential Nature of Tax Data 97

12 CSR 10-3.488 Letter of Authorization (Rescinded December 11, 1980) 98

12 CSR 10-3.490 Misuse of Sales Tax Data by Cities....98

12 CSR 10-3.492 General Examples (Rescinded December 11, 1980) 98

12 CSR 10-3.494 Allowance for Defective Merchandise....99

12 CSR 10-3.496 Seller Timely Payment Discount....98

12 CSR 10-3.498 Seller Retains Collection From Purchaser 98

12 CSR 10-3.500 Successor Liability 98

12 CSR 10-3.502 Successor Determination (Rescinded December 11, 1980) 99

12 CSR 10-3.504 Extensions Granted 99

12 CSR 10-3.506 Determination of Timeliness 99

12 CSR 10-3.508 Effect of Saturday, Sunday or Holiday on Payment Due (Rescinded December 11, 1980) 100

12 CSR 10-3.510 No Permanent Extensions (Rescinded December 11, 1980) 100

12 CSR 10-3.512 Calendar Month Defined (Rescinded December 11, 1980) 100

12 CSR 10-3.514 Exemption Certificate 100

12 CSR 10-3.516 Application for Refund/Credit—Amended Returns 100

12 CSR 10-3.518 Claim Form 101

12 CSR 10-3.520 Who Should Request Refund 101

12 CSR 10-3.522 Purchaser's Promise to Accrue and Pay 101

12 CSR 10-3.524 Bad Debts 101

12 CSR 10-3.526 Refund Rather Than Credit 101

12 CSR 10-3.528 No Interest on Refund/Credit 101

12 CSR 10-3.530 Unconstitutional Taxes 101

12 CSR 10-3.532 Resale Exemption Certificates 102

12 CSR 10-3.534 Delivery of the Sale for Resale Exemption Certificate 102

12 CSR 10-3.536 Seller's Responsibility for Collection and Remittance of Tax 103

12 CSR 10-3.538 Possession and Delivery of Exemption Certificates 104

12 CSR 10-3.540 Limitation on Assessment (Rescinded December 11, 1980) 104

12 CSR 10-3.542 Billing 104

12 CSR 10-3.544 Acknowledgement of Informal Hearing (Rescinded December 11, 1980) 104

12 CSR 10-3.546 Fifteen Days Defined—Personal Service (Rescinded December 11, 1980)........104

12 CSR 10-3.548 Form of Reassessment (Rescinded December 11, 1980)..............................104

12 CSR 10-3.550 Reassessment Petition Filing (Rescinded December 11, 1980) 104

12 CSR 10-3.552 Protest Payments 104

12 CSR 10-3.554 Filing Protest Payment Returns...105

12 CSR 10-3.556 Interest and Discounts are Additional 105

12 CSR 10-3.560 Rulings *(Moved to 12 CSR 10-3.003)* 105

12 CSR 10-3.562 No Waiver of Tax 105

12 CSR 10-3.564 Jeopardized Collection (Rescinded December 11, 1980) 105

12 CSR 10-3.565 Jeopardy Assessment...105

12 CSR 10-3.566 Itinerant or Transitory Sellers 105

12 CSR 10-3.568 Sampling 105

12 CSR 10-3.570 Audit Facilities 106

12 CSR 10-3.572 Out-of-State Companies 106

12 CSR 10-3.574 Recordkeeping Requirements for Microfilm and Data Processing Systems........106

12 CSR 10-3.576 Records Retention (Rescinded December 11, 1980)..................................107

12 CSR 10-3.578 Income Tax Returns May be Used...107

12 CSR 10-3.579 Estoppel Rule...107

12 CSR 10-3.580 Registered Mail (Rescinded December 11, 1980).....................................108

12 CSR 10-3.582 Hearing Location (Rescinded December 11, 1980)....................................108

12 CSR 10-3.584 Lien Filing (Rescinded December 11, 1980) 108

12 CSR 10-3.585 Filing of Liens 108

12 CSR 10-3.586 Partial Release of Lien (Rescinded December 11, 1980) 108

12 CSR 10-3.588 Taxation of Computer Software Programs..108

12 CSR 10-3.590 Advertising Businesses...109

12 CSR 10-3.614	Theaters—Criteria for Exemption	110
12 CSR 10-3.620	Review of Assessments by the Administrative Hearing Commission	111
12 CSR 10-3.622	Special Event Liquor License—Temporary Sales Tax License (Rescinded August 26, 1985)	111
12 CSR 10-3.626	Quarter-Monthly Period Reporting and Remitting Sales Tax	111
12 CSR 10-3.830	Diplomatic Exemptions—Records to be Kept by Sellers as Evidence of Exempt Sales	112
12 CSR 10-3.832	Diplomatic Exemptions—Acknowledgement and Procedure for Requesting	112
12 CSR 10-3.834	Titling and Sales Tax Treatment of Boats	112
12 CSR 10-3.836	Payment of Filing Fees for Lien Releases	113
12 CSR 10-3.838	Payment of Filing Fees for Tax Liens	113
12 CSR 10-3.840	Photographers	113
12 CSR 10-3.842	Surety Companies—Remittance Requirements	114
12 CSR 10-3.844	Letters of Credit	114
12 CSR 10-3.846	Taxability of Sales Made at Fund-Raising Events Conducted by Clubs and Organizations Not Otherwise Exempt From Sales Taxation	117
12 CSR 10-3.848	Concrete Mixing Trucks	117
12 CSR 10-3.850	Veterinary Transactions	117
12 CSR 10-3.852	Orthopedic and Prosthetic Devices, Insulin and Hearing Aids	118
12 CSR 10-3.854	Applicability of Sales Tax to the Sale of Special Fuel	118
12 CSR 10-3.856	Direct Pay Agreement	119
12 CSR 10-3.858	Purchases by State Senators or Representatives	119
12 CSR 10-3.860	Marketing Organizations Soliciting Sales Through Exempt Entity Fund-Raising Activities	120
12 CSR 10-3.862	Sales Tax on Vending Machine Sales	120
12 CSR 10-3.866	Bulldozers for Agricultural Use	121

12 CSR 10-3.868 Not-for-Profit Civic, Social, Service or Fraternal Organizations—Criteria for Exemption 122

12 CSR 10-3.870 Information Required to be Filed by Not-for-Profit Organizations Applying for a Sales Tax Exemption Letter 122

12 CSR 10-3.872 Sales of Newspapers and Other Publications 127

12 CSR 10-3.874 Questions and Answers on Taxation of Newspapers 127

12 CSR 10-3.876 Taxation of Sod Businesses 130

12 CSR 10-3.878 Certificate of Deposit 131

12 CSR 10-3.880 Sales of Postage Stamps 136

12 CSR 10-3.882 Accrual Basis Reporting 136

12 CSR 10-3.884 Basic Steelmaking Exemption—Sales Tax 136

12 CSR 10-3.886 Exemption For Construction Materials Sold To Exempt Entities 136

12 CSR 10-3.888 Sales "In Commerce" Between Missouri And Other States 137

12 CSR 10-3.890 Area Betterment, Tourism or Marketing Program Fees To Be Included As Taxable Gross Receipts 138

12 CSR 10-3.892 Light Aircraft—Light Aircraft Kits 138

12 CSR 10-3.894 Animal Bedding—Exemption 139

12 CSR 10-3.896 Auctioneers, Brokers and Agents 139

12 CSR 10-3.898 Non-Reusable and Reusable Items 139

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

12 CSR 10-3.002 Rules

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

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

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

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

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

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

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

12 CSR 10-3.003 Rulings

PURPOSE: This rule describes the nature of rulings, their applicability and requirements for continued reliance by a taxpayer upon the rulings.

(1) Rulings are written statements of the director of revenue, or his/her authorized agents, of limited application to one (1) or a small number of taxpayers interpreting the statutes to which they relate, ordinarily issued in response to a request for clarification of the tax consequence of a specified set of circumstances affecting the payment of, accounting for or exemption from the sales tax. A ruling issued may not be relied upon by a taxpayer or group of taxpayers to whom it is not issued.

(2) All persons operating in accordance with a ruling issued by the Department of Revenue must submit a copy of the ruling together with their last return for each year. Failure to do so will void the ruling.

(3) From and after February 28, 1975, all written and verbal rulings issued by the Department of Revenue prior to January 1, 1973 were withdrawn and cancelled and not binding upon the Department of Revenue for any tax liability arising after February 28, 1975.

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.*

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

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

12 CSR 10-3.004 Isolated or Occasional Sales

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

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

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

(3) In determining whether or not a person is engaged only in the isolated or occasional sale of property or service, the Department of Revenue will look to the following criteria:
(A) Any holding out as being engaged in business by the seller such as telephone yellow page listing, business cards, solicitation, advertising, business licenses and the like;
(B) Regularity and number of sales within a given period;
(C) Duration of sales activity;
(D) The nature of the service or property being sold and the nature of the market;
(E) The physical setting in which the sales activities are conducted; and
(F) The nature and types of customers.

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

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

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

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

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

*In **Staley v. Missouri Director of Revenue**, 623 SW2d 246 (Mo. banc 1981), a partnership contracted to sell all furnishings in a one-time liquidation sale. The court found since section 144.010.1(2) specifically provides that "business" and an "isolated occasional sale" are distinct terms, no tax is due on isolated or occasional liquidation sales by parties not engaged in the business of selling items sold.*

12 CSR 10-3.005 Isolated or Occasional Sales by Businesses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*In **Staley v. Missouri Director of Revenue**, 623 SW2d 246 (Mo. banc 1981), a partnership contracted to sell all furnishings in a one-time liquidation sale. The court found since section 144.010.1(2) specifically provides that "business"and an "isolated or occasional sale" are distinct terms, no tax is due on isolated or occasional liquidation sales by parties not engaged in the business of selling items sold.*

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

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

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

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

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

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

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

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

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

(F) The ABC law firm sells its company jet for one hundred fifty thousand dollars ($150,000) and purchases a newer model. ABC law firm is subject to sales tax on the sale of the jet;

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

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

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

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

*In **Staley v. Missouri Director of Revenue**, 623 SW2d 246 (Mo. banc 1981), a partnership contracted to sell all furnishings in a one-time liquidation sale. The court found since section 144.010.1.(2) specifically provides that "business"and an "isolated or occasional sale" are distinct terms, no tax is due on isolated or occasional liquidation sales by parties not engaged in the business of selling items sold.*

12 CSR 10-3.007 Partial Liquidation of Trade or Business

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

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

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

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

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

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

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

12 CSR 10-3.008 Manufacturers and Wholesalers

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

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

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

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

12 CSR 10-3.010 Fireworks and Other Seasonal Businesses

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

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

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

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

12 CSR 10-3.012 Sellers Subject To Sales Tax
(Rescinded August 9, 1993)

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

***State ex rel. Thompson-Stearns-Roger v. Schaffner**, 489 SW2d 207 (Mo. banc 1973). The legislature's repeal of old section*

144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.

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

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

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

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

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

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

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

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

12 CSR 10-3.014 Auctions Disclosed Principal
(Rescinded September 11, 1983)

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

12 CSR 10-3.016 Consignment Sales
(Rescinded December 11, 1980)

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

12 CSR 10-3.017 Ticket Sales

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

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.018 Truckers Engaged in Retail Business

PURPOSE: This rule interprets the sales tax law as it applies to truckers engaged in retail business and interprets and applies section 144.010, RSMo.

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

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

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

12 CSR 10-3.020 Finance Charges

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

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

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

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

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

12 CSR 10-3.022 Cash and Trade Discounts

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

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

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

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

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

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

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

12 CSR 10-3.023 Rebates

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

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

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

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

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

12 CSR 10-3.024 Returned Goods

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

(1) When a purchaser returns tangible personal property to the seller and obtains a full or partial refund of the purchase price, the seller also shall return to the purchaser all sales tax collected on the refunded amount. If the seller previously had included the total

gross receipts in a sales tax return filed with the Department of Revenue and paid the sales tax on the gross receipts, s/he should take deduction on his/her next sales tax return for the amount of the purchase price refunded.

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

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

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

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

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

12 CSR 10-3.028 Construction Contractors

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.030 Construction Aggregate

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

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

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

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

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

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

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

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

12 CSR 10-3.031 Dual Operators

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.034 Modular or Sectional Homes

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.036 Sales Made by Employers to Employees

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

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

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

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

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

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

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

12 CSR 10-3.038 Promotional Gifts and Premiums

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

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

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

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

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

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

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

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

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

***Mid-America Enterprises, Inc.,d/b/a Worlds of Fun v. Director of Revenue**, Case No.*

RS-84-0022 (A.H.C. 12/31/86). Petitioner argued that collection of sales and use tax on its purchases of prizes constituted double or even triple taxation because it was currently collecting and remitting sales tax on its gate admissions and was also collecting sales tax on receipts received from customers playing a particular game. In response to this argument, the commission held that the charge and amount paid for admission and receipts from the individual games were separate and distinct incidents of taxation under 144.020.1(2), RSMo and were taxable as fees paid to or in places of amusement, entertainment of recreation. Petitioner's purchases of prizes for the purpose of inducing or enticing prospective participants to play its games was a third incident of taxation as a retail sale of tangible personal property under 144.020.1(1), RSMo because petitioner was purchasing the stuffed animals and novelty items for its use and consumption in the course of operating its amusement park.

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

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

12 CSR 10-3.042 State or Federal Concessionaires

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

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

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

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

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

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

12 CSR 10-3.044 Labor or Services Rendered

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.046 Caterers and Mandatory Gratuities

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

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

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

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

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

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

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

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

(1) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.050 Drinks and Beverages

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

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

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

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

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

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

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

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

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

12 CSR 10-3.052 Sale of Ice

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

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

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

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

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

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

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

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

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

12 CSR 10-3.054 Warehousemen

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

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

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

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

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

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

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

12 CSR 10-3.056 Retreading Tires

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

(1) A business engaged in retreading tires is not a manufacturer. Sales tax is due on all retreading and other equipment purchased by the business.

(2) A business, purchasing and selling at retail old tires after recapping or retreading them, is subject to sales tax on the total amount of the sale. The dealer should purchase the old tires and recapping or retreading supplies with an exemption certificate.

(3) A business engaged in custom retreading, for customers who furnish their own tire carcasses for retreading, has the option of purchasing the uncured rubber and other recapping and retreading materials subject to sales tax and not charging sales tax on the custom retreading service or of separately stating the costs of the uncured rubber and related materials attributable to the new tread and charging sales tax on that portion of the customer retreading service.

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.*

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

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

12 CSR 10-3.058 Automotive Refinishers and Painters

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

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

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

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

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

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

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

12 CSR 10-3.060 Memorial Stones

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

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

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

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

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

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

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

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

12 CSR 10-3.062 Maintenance or Service Contracts Without Parts

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

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

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

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

12 CSR 10-3.064 Maintenance or Service Contracts With Parts

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

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

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

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

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

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

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

(7) Example 5: A car dealer sells a buyer an extended warranty beyond the initial warranty for services only. The extended warranty

contract is not subject to sales tax. If the dealer bills the buyer additional charges for repair parts as needed, the dealer must charge the buyer sales tax on the repair parts.

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

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

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

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

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

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

(1) Delivery costs, including postage and transportation costs, are subject to sales tax if the parties intend for delivery to be part of the sale.

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

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

(A) When title passes to the purchaser;

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

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

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

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

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

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

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

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

12 CSR 10-3.068 Freight and Transportation Charges
(Rescinded December 11, 1980)

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

12 CSR 10-3.070 Service-Oriented Industries

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

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

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

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

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

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

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

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

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

12 CSR 10-3.072 Repair Industries

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.076 Used Car Dealers

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

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

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

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

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

12 CSR 10-3.078 Laundries and Dry Cleaners

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

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

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

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

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

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

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

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

12 CSR 10-3.080 Ceramic Shops

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

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

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

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

12 CSR 10-3.082 Furniture Repairers and Upholsterers

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

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

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

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

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

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

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

12 CSR 10-3.084 Fur and Garment Repairers

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

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

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

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

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

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

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

12 CSR 10-3.086 Bookbinders, Papercutters, Etc.

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

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

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

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

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

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

12 CSR 10-3.088 Photographers, Photofinishers and Photoengravers

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

(1) Sales of photoengravings, photostats, blueprints, electrotypes, stereotypes, wood engravings and the like, to customers for use

or consumption, whether on special order, contract or otherwise, are subject to sales tax. Likewise, sales to architects, abstract and title companies are also retail sales for use and consumption and therefore are subject to sales tax. Sales of picture frames, films, cameras and other similar items are sales at retail and are subject to sales tax.

(2) Photographers, photofinishers, photoengravers, blueprinters and other persons purchasing tangible personal property such as paper, which becomes a component or an ingredient part of a finished product which will ultimately be sold at retail, should purchase their supplies under a resale exemption certificate. However, supplies, equipment, dry plates, film, chemicals and other materials purchased for their own use or consumption are subject to sales tax.

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

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 70 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-37B was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.090 Watch and Jewelry Repairers

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

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

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

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

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

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

12 CSR 10-3.092 Painters

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

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

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

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

12 CSR 10-3.094 Interior or Exterior Decorators

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

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

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

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

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

12 CSR 10-3.096 Janitorial Services

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

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

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

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

12 CSR 10-3.098 Drugs and Medicines

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

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

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

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

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

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

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

12 CSR 10-3.100 Barber and Beauty Shops

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.106 Vending Machines on Premises of Owner

PURPOSE: This rule interprets the sales tax law as it applies to sales made from vending machines located on the premises of the owner and interprets and applies sections 144.010 and 144.020, RSMo.

(1) The taxable receipts from a vending machine located on the premises of the owner of the machine are receipts to the owner of the machine and are subject to the sales tax.

(2) Example: Mr. D, a cigar store owner, owns the candy vending machine located in his store. Mr. D is subject to the sales tax.

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.*

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

***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

PURPOSE: This rule interprets the sales tax law as it applies to sales made from vending machines not located on the owner's premises and interprets and applies sections 144.010 and 144.020, RSMo.

(1) The taxable receipts from a vending machine located on the premises of one who is not the owner of the machine are receipts of the owner of the machine who is subject to the sales tax. If under an agreement, the owner of the machine pays an amount to the owner of the premises, this amount is not deductible from the machine owner's receipts subject to the sales tax.

(2) Example: Mr. Wash, the owner of a service station, lets Mr. Tom put a soft drink vending machine on the premises of Wash's service station. Mr. Tom has title to the vending machine and is subject to the sales tax.

(3) Mr. Tom has an agreement with Mr. Wash to equally divide the receipts from the machine. Mr. Tom cannot deduct this amount from his receipts subject to the sales tax. Mr. Wash is not subject to the sales tax because he is not selling tangible personal property.

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.*

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

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

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

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

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

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

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

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

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

12 CSR 10-3.112 Newspaper Defined

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

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

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.116 Service Station Ownership

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

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

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

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

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

12 CSR 10-3.118 Leased Departments or Space

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.124 Coins and Bullion

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

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

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

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

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

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

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

Finally, the court found that because the tax in question was imposed on the value of the precious metal and not on the intangible values assigned the coins by the federal government that the sales tax in no way infringed upon the exclusive right of the federal government to regulate the value of money or coin or to determine the character of legal tender.

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

12 CSR 10-3.126 Federal Manufacturer's Excise Tax

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

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

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

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

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

12 CSR 10-3.128 Salvage Companies

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

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

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

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

12 CSR 10-3.130 Assignments and Bankruptcies

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

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

(1) The trustee in bankruptcy, or the assignee in the case where an assignment has been made for and on behalf of creditors, should

remit any outstanding taxes, interest charges or penalties before a general distribution of funds is made.

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

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

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

12 CSR 10-3.131 Change of State Sales Tax Rate

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

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

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

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

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

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Emergency amendment filed Sept. 29, 1989, effective Oct. 9, 1989, expired Feb. 5, 1990. Amended: Filed Sept. 29, 1989, effective Feb. 25, 1990.*

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

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

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

12 CSR 10-3.134 Purchaser's Responsibilities

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

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

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

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

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

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

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

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

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

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

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

Finally, the commission held that 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

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

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

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

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 16 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-61 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.138 Consideration Less Than Fair Market Value

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

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

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

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

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

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

12 CSR 10-3.140 Interdepartmental Transfers

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

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

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

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

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

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

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

12 CSR 10-3.142 Trading Stamps

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

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

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

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

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

12 CSR 10-3.144 Redemption of Coupons

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

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

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

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

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

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

12 CSR 10-3.146 Core Deposits

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

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

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

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

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

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

12 CSR 10-3.148 When a Sale Consummates

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

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

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

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

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

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

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

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

12 CSR 10-3.150 Guidelines on When Title Passes

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

(1) All relevant facts in each case must be examined to determine when title to property

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

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

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

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

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

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

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

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

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

12 CSR 10-3.152 Physicians and Dentists

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

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

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.154 Optometrists, Ophthalmologists and Opticians

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.156 Dental Laboratories

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

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

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

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

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

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

12 CSR 10-3.158 Sale on Installed Basis

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

(1) Persons, other than contractors, who sell tangible personal property on an installed

basis are subject to sales tax on the entire gross receipts.

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

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

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

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

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

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

12 CSR 10-3.160 Funeral Receipts

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

(1) Persons such as undertakers and funeral directors are engaged in the business of selling tangible personal property and are subject to the sales tax on their receipts from caskets, grave vaults, clothing, flowers and similar articles. Receipts from services rendered, such as embalming, hearse service, family cars and the like, are not subject to the sales tax when separately stated.

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

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

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

12 CSR 10-3.162 Pawnbrokers

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

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

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

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

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

12 CSR 10-3.164 Installment Sales and Repossessions

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

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

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

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

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

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

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

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

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

12 CSR 10-3.166 Seller of Boats

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.168 Documentation Required

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

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

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

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

tomer, date, amount of the transaction and a signed exemption certificate.

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

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

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

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

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

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

12 CSR 10-3.172 Advertising Signs

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

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

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

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

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

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

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

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

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

12 CSR 10-3.174 Stolen or Destroyed Property

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

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

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

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

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

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

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

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

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

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

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

(1) Definitions.

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

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

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

(2) All fees or charges, including fees or charges paid for admission and seating accommodations, paid to or in any place of amusement, entertainment, recreation, game or athletic event are subject to sales tax when operated by for-profit and not-for-profit organizations as business activities. Service charges in addition to the stated ticket price on tickets sold for admission to places of amusement are subject to sales tax if levied by the operator or proprietor of the place of amusement. Service charges on tickets sold for admission to places of amusement levied by sellers or handlers other than the operator or proprietor of the place of amusement are not subject to sales tax. Tax on sales of all tickets, including season tickets, shall be collected and remitted by the seller at the time payment for the tickets is received (also see 12 CSR 10-3.048).

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

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

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

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

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

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

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

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

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

(12) Amounts paid for lessons, whether within or not within a place of amusement, are

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

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

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

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

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 49 April 20, 1974, effective April 30, 1974. S.T. regulation 010-82 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded and readopted: Filed March 11, 1983, effective Sept. 11, 1983. Amended: Filed May 10, 1984, effective Nov. 11, 1984. Amended: Filed Dec. 11, 1984, effective May 25, 1985. Emergency amendment filed Nov. 15, 1990, effective Nov. 25, 1990, expired March 24, 1991. Emergency rescission and rule filed Jan. 3, 1991, effective Jan. 13, 1991, expired May 13, 1991. Emergency rescission and rule filed May 3, 1991, effective May 13, 1991, expired Sept. 9, 1991. Rescinded and readopted: Filed Jan. 3, 1991, effective June 10, 1991.*

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

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

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

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

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

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

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

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

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

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

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

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

Regarding the first provision, the commission found that the sums in question were not paid for "admission" as that term is commonly understood. The commission also found that accommodations were not the subject for which the sums were paid. With respect to the third provision, the commission found that the assessments did not apply to any separate "fees" charged for the use of petitioner's amenities but were based on charges for the time share occupancies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AUTHORITY: section 144.270, RSMo 1986. S.T. regulation 010-83 was filed OCt. 28, 1975, effective Nov. 7, 1975. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Emergency recission 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 nonmembers was strictly limited. Fees for golf and tennis were charged.

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

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.182 Excursions

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

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

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

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

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

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

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

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

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

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

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

12 CSR 10-3.184 Electricity, Water and Gas

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

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

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

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

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

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

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

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

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

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

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

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

***Hyde Park Housing v. Director of Revenue**, 850 SW2d 82 (Mo. banc 1993). Taxpayers appealed a decision of the Administrative Hearing Commission which upheld assessments of sales tax and interest on purchases of electricity used in occupied and vacant apartments. The Missouri Supreme Court held "The plain and ordinary meaning of the 1986 amendment to section 144.030.2(23) is clear and unambiguous: purchased metered electricity sold under a residential tariff is considered as a sale made for domestic use and is exempt from sales tax." The court also held the exemption is not limited to natural persons and applies without regard to who made the purchase.*

12 CSR 10-3.186 Water Haulers

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

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

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

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

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

12 CSR 10-3.188 Telephone Service

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

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

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

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

(C) Intrastate credit card calls are taxable and will be taxed according to the service address from which the telephone service originates.

(D) Due to the fact that current technology does not allow a taxpayer to determine the service address for cellular telephone service, including mobile car phones, maritime systems, air-to-ground systems and the like, the sales tax rate shall be determined by the billing address of the customer billed for the call as defined by telephone number, authorization code or location in Missouri where bills are sent. Cellular telephone service, both incoming and outgoing, consists of the service between the cellular telephone, the cell sites and the mobile telephone switching office (MTSO) (see section (12) for taxation of roamer cellular telephone service charges).

(E) Example: An individual from Texas places a call from the Kansas City, Missouri airport to St. Louis, Missouri and charges the call to a credit card with a billing address in Texas. The caller should be billed Missouri sales tax at the rate in effect at Kansas City, Missouri.

(F) Example: A cellular telephone customer with a billing address in Kansas City, Missouri places a call to St. Louis, Missouri from a cellular telephone located in his/her automobile while driving in Kansas City, Missouri. The charges for cellular telephone services are subject to sales tax based upon the billing address of the customer in Kansas City, Missouri. All other telephone service charges (noncellular) are based upon the general service address rules set forth here. This applies regardless of whether the call is placed with or without a credit card. However, if the call is placed as a collect call to a St. Louis, Missouri location, then the noncellular telephone service charges are subject to sales tax at the rate in effect at the billing address of the receiver.

(2) Sales tax applies to all charges for minimum monthly service, service connections and disconnections, tariff telephone directory listings, equipment such as telephones, computer modems, deaf set extensions, special speakers and any other equipment furnished in conjunction with furnishing or enhancing telephone service. The applicable tax rate will be determined by the location of the equipment. Example: John Doe is charged six dollars and ninety cents ($6.90) per month for his home telephone service. The six dollars and ninety cents ($6.90) consists of six dollars ($6) for line charges, fifty cents (50¢) for the telephone monthly service charge and forty cents (40¢) for federal excise tax. Sales tax would be due on the six dollars ($6) and the fifty-cent (50¢) charge for the telephone. The tax rate would be based on where the telephone is located.

(3) The sale of tangible personal property, such as a telephone, shall be treated as a retail sale and the tax rate applicable will be based on the business location of the seller. Example: The Expo Telephone Company operates a telephone sales and service office which sells telephones to the public on a retail basis. The company should charge tax at the time a sale is made based upon the location of the store. The rental of tangible personal property, when billed separately from telecommunication service, shall be treated as all other rentals for purposes of sales tax (see 12 CSR 10-3.226).

(4) Sales tax applies to customer access charges billed to the user of any telephone line, whether the line is used for intrastate or interstate messages. These access charges include user access line charges for WATS

lines, residential and business user access charges and access charges for the use of long distance services. Provided, however, sales of access or similar service to telecommunications companies which will be used to provide telecommunications service are not subject to tax and are considered to be for resale.

(A) Example: A one dollar ($1) access charge is added to each customer's bill every month. This represents a federally mandated charge for the interstate telephone network. The one dollar ($1) would be subject to tax based on the location of the telephone.

(B) Example: XYZ Long Distance Company charges its subscribers two dollars ($2) per month to access their interstate telephone lines. The two dollars ($2) would be subject to sales tax based on the rate where the telephone is located.

(C) Example: Doe Company pays fifty dollars ($50) per month in end user access line charge for a WATS line. If the charge is for a WATS line accessed through telephone equipment located in Missouri, it would be subject to tax based upon the location of the telephone equipment used by the subscriber to access the WATS line.

(5) Receipts of telephone companies for telephone transmissions made through public pay telephones are not subject to sales tax. Receipts for telephone transmission made through semipublic pay telephones are subject to the sales tax. For purposes of this section, public pay telephones and semipublic pay telephones shall mean—

(A) Public pay telephones refer to an exchange station installed at the telephone company's option, in charge of an attendant, or equipped with a coin collection or other billing device at a location chosen by the telephone company as suitable and necessary for furnishing service to the general public and for this telephone no listing in a phone directory is generally allowed. Telephone company includes any telecommunications company authorized by the Missouri Public Service Commission to provide pay telephone service in Missouri;

(B) Semipublic telephone shall mean and refer to a business subscriber station, equipped with a coin collection device, designed for a combination of subscriber and public usage, which telephone is located where it may be collectively used by guests, members, employees, boarders, students or other occupants, as well as the subscriber, and for which the subscriber is entitled to a directory listing for purposes of incoming calls and business purposes. The definition of semipublic telephones in this rule also includes customer-owned coin telephones at locations accessible to the public, irrespective of whether or not the coin-operated telephone is designed for use by the subscriber. A customer-owned coin telephone is a phone owned by a person other than a telecommunication company authorized by the Missouri Public Service Commission to provide pay telephone service in Missouri; and

(C) The price charged for a telephone call shall be considered to be inclusive of the applicable sales tax which shall be calculated using the sales tax rate in effect for the location of the pay telephone. Due to the method of payment for pay telephone service, it is not necessary that the amount of sales tax be stated separately and it is not necessary that a notice be placed on telephones which advises users that sales tax is included in the rate. Telephone companies may apply to the director of revenue for permission to use a special accounting method to compute the amount of sales tax due based upon statistical sampling.

(6) Sales tax shall apply to the basic rate charged including any advance or equalized payment, surcharge, minimum or flat rate. Any franchise, occupation, sales, license, excise, privilege or similar tax of any kind, which is not a part of the basic rate is not subject to the sales tax. This does not exclude access charges from taxation.

(7) All intrastate telephone service is taxable. Intrastate cellular telephone service for origination or termination of a call is subject to Missouri sales tax whether or not the call is subsequently transmitted instate or out-of-state by a separate seller of telephone service. An interstate call shall be considered any transmission originating within this state and destined to a point outside of Missouri or any transmission originating outside of this state and terminating at a location within this state whether the service is provided by a single seller or by two (2) sellers participating in the transmission of the call. When a customer is billed for intrastate and interstate calls as a lump sum, and charges for each are not readily ascertainable, the entire amount of the charge is subject to the sales tax.

(A) Example: Ms. Doe receives a bill for toll calls covering the month of January. The bill is for forty dollars ($40) and does not segregate interstate and intrastate calls. The entire forty dollars ($40) would be subject to sales tax.

(B) Example: A cellular telephone customer with a Kansas City, Missouri billing address places a call to Denver, Colorado from a cellular telephone located in his/her automobile while driving in Kansas City, Missouri. The portion of the call relating to separately billed cellular telephone service to transmit the call from the automobile through the transmitting cell sites in the Kansas City area and then to the MTSO in Kansas City, Missouri is subject to sales tax based upon the billing address of the cellular telephone service customer. The interstate portion of the call relating to telephone service from the MTSO over land lines to the Denver, Colorado destination point is not subject to sales tax. If the intrastate and interstate portions are not separately stated to the customer and are not otherwise ascertainable, the entire charge is taxable.

(8) Receipts derived from charges for tariff telephone directory listings are subject to sales tax if a separate charge is made for the listing. Example: Company B which is located in Warrensburg places its name in the Jefferson City directory and is billed six dollars ($6) for this service. The six dollar-($6) charge would be subject to sales tax in its entirety. The tax rate applicable will be based on the domicile of the subscriber.

(9) In situations where telegrams are billed through a telephone subscriber's account, these charges are subject to sales tax and are to be included in the measure of tax by the telegraph company. The tax rate applicable will be based on the service address for non-cellular telephone service and will be based on the billing address of the subscriber as defined by telephone number, authorization code or location in Missouri where bills are sent for cellular telephone service.

(10) A subscriber of telephone service is any individual, business, corporation or other entity who uses, or maintains for use, equipment necessary to transmit information over telephone lines. Telephone lines refer to any means of transmitting telephone messages, including, but not limited to, wire, radio transmission, microwave and optic fiber technology.

(11) Telephone service applies to the service ordinarily and popularly ascribed to it including, without limitation, the transmission of messages and conversations through use of local, toll and wide area telephone service; private line services; land line services; cellular telephone services; and maritime and air-to-ground telephone service. Telephone service includes the transmission of information over telephone lines and other telephonic media for facsimile transfers. Telephone service does not include value-added services including computer processing applications used to act on the form, content, code and

protocol of the information for purposes other than transmission.

(12) Notwithstanding any other provisions of this rule, roamer cellular telephone service charges are subject to sales tax as follows: A cellular telephone company providing roamer cellular telephone service to the customer of a different cellular telephone company shall collect and remit sales tax based on the location of the MTSO that receives and transmits the cellular telephone signals. The sales tax shall apply to all roamer cellular telephone service provided in Missouri.

(A) Example: A cellular telephone customer/subscriber of a Denver, Colorado cellular telephone company places a cellular telephone call from his/her automobile while driving in St. Louis, Missouri. The call is received and transmitted by the MTSO of a St. Louis, Missouri cellular telephone company. The MTSO is located in St. Louis, Missouri. The St. Louis cellular telephone company bills the Denver, Colorado cellular telephone company for the call, which in turn bills the Denver customer/subscriber. The St. Louis cellular telephone company shall collect and remit sales tax on the amounts billed to the Denver, Colorado cellular telephone company based upon the location of the MTSO in St. Louis.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 57 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-87A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed April 2, 1985, effective July 1, 1986. Amended: Filed Jan. 5, 1987, effective April 11, 1987. Amended: Filed July 20, 1987, effective Oct. 25, 1987. Emergency amendment filed Feb. 11, 1991, effective Feb. 21, 1991, expired June 20, 1991. Emergency amendment filed June 11, 1991, effective June 21, 1991, expired Oct. 9, 1991. Amended: Filed Feb. 11, 1991, effective Sept. 30, 1991. Amended: Filed Dec. 2, 1992, effective Aug. 9, 1993.*

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

***Mobile Radio Communications, Inc. v. Director of Revenue**, Case No. RS-79-0199 (A.H.C. 12/16/82). The commission held that mobile radio service does not constitute taxable "Service to telephone subscribers and to others through equipment of telephone subscribers" under section 144.202.1(4), RSMo. The commission interprets that language to mean that the purchaser must be receiving telephone service through telephone equipment. Radio service is not telephone service. Furthermore, according to the commission, the telephone land lines petitioner used were private circuits used solely in connection with the petitioner's transmission of signals and were not connected or otherwise tied into Southwestern Bell's telephone system. Additionally, the court held that petitioner was not liable for sales tax on the receipts from the rental of pagers and mobile radios, because petitioner had purchased the pagers and mobile radios under the conditions of sales at retail and paid tax on them pursuant to section 144.020.1(8), RSMo.*

12 CSR 10-3.192 Seller's Responsibilities

PURPOSE: This rule provides guidelines for the seller's responsibilities and interprets and applies sections 144.010, 144.021, 144.080 and 144.210, RSMo.

(1) The burden of proving that a sale of tangible personal property or taxable services was made for resale and not retail shall be upon the seller. The burden of proving that a retail sale of tangible personal property or taxable services was exempt under the sales tax law shall be upon the person claiming the exemption. The seller is required to secure and retain a signed exemption certificate from the purchaser as evidence that the sale is made for resale or otherwise exempted from the sales tax. Acquiring only the Missouri sales tax license number of a letter stating the purchaser will be responsible for the tax is not sufficient proof by itself that the sale is exempt.

(2) When the Department of Revenue has reason to believe the seller acted not in good faith in the acceptance of an exemption certificate, the department is empowered to make an additional assessment of tax due from the seller. When the seller has been determined to have acted not in good faith, both seller and purchaser will be held liable until all liabilities have been satisfied.

(3) The seller must indicate on each invoice or bill of sale the name of each purchaser from whom an exemption certificate has been secured or be subject to the sales tax upon the sale.

(4) Exemption certificates must be available at the establishment of the seller for ready inspection and comparison with the deductions claimed. A seller, duly registered under the provisions of the Sales Tax Act and continually engaged in the business of selling tangible personal property or taxable services at retail, must present an exemption certificate to his/her wholesaler or supplier as to his/her registration as a retailer. The purchaser shall not be required to execute additional certificates of resale for individual purchases as long as there is no change in the character of his/her operation and the purchases are of tangible personal property or taxable services of a sort usually purchased by him/her for resale.

(5) A seller who accepts, in good faith, a signed exemption certificate from the purchaser as authorized under this rule is relieved of all liability on account of any erroneous claim of exemption and the purchaser or other person claiming exemption will be solely responsible for all taxes, interest and penalty due.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 86 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-89 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

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

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

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

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

12 CSR 10-3.194 Multistate Statutes

PURPOSE: This rule provides that the Multistate Tax Compact relating to sales and use taxes is applicable in Missouri, and interprets and applies section 32.200, RSMo.

(1) The provisions of the Multistate Tax Compact section 32.200, RSMo applicable to sales and use taxes are fully applicable in Missouri.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-90 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

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

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

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

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

12 CSR 10-3.196 Nonreturnable Containers

PURPOSE: This rule interprets the sales tax law as it applies to nonreturnable containers and interprets and applies section 144.011(9), RSMo.

(1) Sales of nonreturnable containers to persons who use them to package tangible personal property so that the containers become part of the products ultimately sold are sales for resale. The buyer of this type of container may give a sale for resale exemption certificate for the containers which s/he purchases. Thus, a seller, who sells nonreturnable containers to a person who has delivered a sale for resale certificate and uses the containers in packaging goods which are then sold to consumers may deduct the receipts from his/her sales.

(2) Example: The sale of disposable bottles to a bottler for use in bottling beverages is a sale for resale and is not subject to the sales tax.

(3) Also, a retail sale does not encompass the purchase, by persons operating eating or food service establishments, of items of a nonreusable nature which are furnished to the customers of those establishments with or in conjunction with the retail sales of their food or beverage. This exemption includes, but is not limited to, wrapping or packaging materials and nonreusable paper, wood, plastic and aluminum articles such as containers, trays, napkins, dishes, silverware, cups, bags, boxes, straws, sticks and toothpicks.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

Smith Beverage Co. of Columbia, v. Reiss*, 568 SW2d 61 (Mo. banc 1978). Bottlers were* *not required to pay a use tax on reusable soft drink bottles purchased from outstate suppliers and transferred to retailers for sale to consumers, since these transactions fall within the purchase for resale exemption.*

***King v. National Super Markets, Inc**., 653 SW2d 220 (Mo. banc 1983). The purchase of paper bags by a supermarket was considered to be a purchase for resale because they are transferred to the supermarket's customers for consideration, since customers pay an increased price in exchange for the quantity of bags required to bag their purchases. Since **National** was including the cost of the bags as part of the gross taxable sale, the purpose of the use tax would not be achieved by allowing its imposition in this case.*

12 CSR 10-3.198 Returnable Containers

PURPOSE: This rule interprets the sales tax law as it applies to returnable containers and interprets and applies sections 144.010 and 144.011(9), RSMo.

(1) No sales tax is due on the sale of reusable containers for which a deposit is required and refunded on return. The term encompasses returnable bottles for beverages and returnable soft drink bottle cases.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Smith Beverage Co. of Columbia, Inc. v. A. Gerald Reiss**, 568 SW2d 61 (Mo. banc 1978). Bottlers were not required to pay a use tax on reusable soft drink bottles purchased from outstate suppliers and transferred to retailers for sale to consumers, since these transactions fall within the purchase for resale exemption.*

12 CSR 10-3.200 Wrapping Materials

PURPOSE: This rule interprets the sales tax law as it applies to wrapping materials and interprets and applies section 144.011, RSMo.

(1) Persons selling bags, boxes, paper, twine and similar articles to persons who use the materials to package merchandise for subsequent sale are not subject to sales tax on these sales. A grocer, for instance, who purchases trays and see-through wrapping paper to package meat for subsequent sale may purchase the items under a resale exemption certificate.

(2) Persons who purchase bags, boxes, paper and similar articles to package their own goods for subsequent use or consumption or to package the goods or merchandise for others should not purchase those items under a resale exemption certificate. A store which provides a complimentary gift wrapping department for customers who have purchased goods in other departments of the store should pay sales tax on the wrapping materials at the time of purchase.

(3) Specifically exempted under the law are purchases by persons operating eating or food service establishments of nonreusable items furnished to their customers with or in conjunction with the retail sales of food or beverage.

(4) Retailers purchasing bags, boxes and similar articles to be used for packaging customers' purchases may purchase the items under an exemption certificate (see *King v. National Super Markets, Inc*., 653 SW2d 220 (Mo. banc 1983)).

(A) Example: A grocer may purchase grocery bags tax exempt.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Oct. 15, 1985, effective Jan. 26, 1986. Amended: Filed July 14, 1986, effective Nov. 28, 1986.*

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

***Rival Manufacturing Co. v. Director of Revenue**, Case No. RS-81-0522 (A.H.C. 6/4/83). The issue in this case was the imposition of sales and use tax on shippers (boxes to ship multiple items) which taxpayer used to send crock pots to its customers. The controlling issue in this case was whether or not the shippers were purchased by the petitioner at retail (for its own use and consumption) or purchased for resale (to be sold to its customers). If they were purchased for resale, they were exempt from taxation. The commission cited the three-part test of **Smith Beverage Co. v. Reiss**, 568 SW2d 61 (Mo. banc 1978) for determining if purchases were for resale. The three parts of that test are: 1) a transfer, barter or exchange of title; 2) of tangible personal property; 3) for consideration.*

The Department argued that the third part of the test had not been met because consideration must be bargained for. They were part of petitioner's overhead and they were optional. The purchasers did not bargain for the shippers because it did not bargain for a particular mode of shipment. The commission found that the cost of the shippers was part of the selling price of the items purchased. They were transferred for a consideration. The court concluded that the shippers were exempt from tax because they were not purchased at retail, but were purchased for resale.

***King v. National Super Markets, Inc**., 653 SW2d 220 (Mo. banc 1983). The purchase of paper bags by a supermarket was considered to be a purchase for resale because they are transferred to the supermarket's customers for consideration, since customers pay an increased price in exchange for the quantity of bags required to bag their purchases. Since **National** was including the cost of the bags as part of the gross taxable sale, the purpose of the use tax would not be achieved by allowing its imposition in this case.*

12 CSR 10-3.202 Pallets

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

(1) Sales of pallets are subject to sales tax unless purchased under conditions of sale for resale.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-4 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

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

***Kaiser Aluminum & Chemical Corp. v. Director of Revenue**, Case No. RS-82-0068 (A.H.C. 10/28/83). The issues in this case were the taxability of the purchase and subsequent transfer of certain pallets which petitioner used to stack its bricks upon as they were transferred to customers. The commission based its conclusions of law upon a factual finding that the pallets were indeed sold to its customers. Because the pallets were sold to petitioner's customers, the resale exemption certificates which the petitioner presented at the time it purchased the pallets in question were valid. In reaching this conclusion, the commission held that the statutory definition accorded the word sale was applicable to the term resale as well, reasoning by analogy from the decision in **Smith Beverage Co. v. Reiss**, 568 SW2d 61 (Mo. banc 1978). In making its factual finding the commission noted that while the petitioner's customers could have returned the pallets for a deposit they were under no obligation to do so, and additionally, that for accounting purposes the transfer of pallets was treated as sales.*

The other issue addressed in the case was whether or not the sale of the pallets constituted sales at retail which would be subject to sales tax. Petitioner contended that its subsequent sale of the pallets was exempt because they constituted reusable containers. The commission upheld 12 CSR 10-3.020(2) which provides that pallets are not exempt. The commission pointed to the language in section 144.011.1, RSMo which requires that the containers be sold with "tangible personal property contained therein." Because goods are not contained in pallets the commission held that they did not constitute containers and were nonexempt.

12 CSR 10-3.204 Paper Towels, Sales Slips

PURPOSE: This rule interprets the sales tax law as it applies to sales of paper towels, sales slips and like items, and interprets and applies sections 144.010 and 144.021, RSMo.

(1) Sales of paper towels, toilet tissues, sales slips and similar items to businesses are subject to sales tax unless resold.

(2) Example 1: The Book and Stationery Store is engaged in the business of selling office supplies. Among the items which it carries for sale to other merchants are sales slips. B & S purchases the sales slips from Y Company. Y Company will be allowed to treat the sale of slips to B & S as sales for resale if it has received a sale for resale exemption certificate. The sales slips which B & S sells to its customers are subject to sales tax.

(3) Example 2: B & S uses some of the sales slips which it purchases to record transactions between itself and its customers and to bill the customers. B & S must pay sales tax on these sales slips which it uses or consumes.

(4) Example 3: The Fast Food Burger Bar purchases paper towels and toilet tissue for its public restroom. Fast Food must pay sales tax on these items at the time of purchase.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 011-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.206 Bottle Caps and Crowns

PURPOSE: This rule interprets the sales tax law as it applies to sales of crowns and caps, and interprets and applies section 144.011, RSMo.

(1) The sale of caps or crowns to persons who use them in bottling soft drinks are sales for resale. The sale of the bottled beverage to a person selling the beverage for ultimate consumption is also a sale for resale.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-6 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

***Smith Beverage Co. v. Reiss**, 568 SW2d 61 (Mo. banc 1978). Bottlers were not required to pay a use tax on reusable soft drink bottles purchased from outstate suppliers and transferred to retailers for sale to consumers, since these transactions fall within the purchase for resale exemption.*

12 CSR 10-3.208 Crates and Cartons

PURPOSE: This rule interprets the sales tax law as it applies to the sale of crates and cartons, and interprets and applies sections 144.010 and 144.011, RSMo.

(1) Sales of crates and cartons are subject to tax unless purchased under conditions of sale for resale.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 34. S.T. regulation 011-7 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

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

12 CSR 10-3.210 Seller Must Charge Correct Rate

PURPOSE: This rule interprets the sales tax law as it applies to the responsibility of the seller for charging the correct rate of tax and interprets and applies sections 144.060, 144.080 and 144.100, RSMo.

(1) It is the responsibility of the seller to charge his/her customer only for that amount of tax for which the law authorizes him/her to seek reimbursement. Any overcharges will be treated as part of his/her gross receipts for purposes of determining his/her tax responsibility to the Department of Revenue.

(2) Amounts which a seller charges to and receives from a purchaser in accordance with the sales tax law are not includable in his/her gross receipts if the amounts are separately charged or stated.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.212 Rooms, Meals and Drinks

PURPOSE: This rule interprets the sales tax law as it applies to the sale of rooms, meals and drinks, and interprets and applies sections 144.010, 144.020 and 144.021, RSMo.

(1) Eating, drinking and sleeping establishments deriving receipts from rooms, meals and drinks served to the public are subject to the sales tax on all these receipts.

(2) Persons deriving receipts from room charges, whether rented or leased on a daily, weekly or monthly basis, are subject to the sales tax from these receipts unless a person renting or leasing is deemed to be a permanent resident. In all instances, receipts from permanent residents for food and drink are taxable to the seller, regardless of whether the charge is made daily, weekly or monthly.

(3) Persons engaged in providing rooms are also subject to the sales tax on all sales of tangible personal property and taxable services, including telephone calls. When purchasing tangible personal property which is not resold to guests, residents or employees, no resale exemption certificate should be furnished to suppliers of these items. Instead, the supplier is subject to the sales tax on these items.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 50 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 020-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.214 Complimentary Rooms, Meals and Drinks

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

(1) Persons such as hotels and motels providing complimentary rooms, meals and drinks or other items may not purchase those meals, beverages or other items under conditions of a sale for resale.

(2) Example: The Big Wheel Hotel provides a complimentary room and bottle for Herb Hubcap who is a very important person. The Big Wheel Hotel is subject to sales tax on the actual cost of the bottle.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.216 Permanent Resident Defined

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

(1) A person who contracts in advance for a room in a hotel or motel for a period of thirty (30) consecutive days or more and who actually remains a guest of the hotel or motel for thirty (30) consecutive days or more is considered a permanent resident and the rental or lease receipts from letting the room are not subject to the sales tax.

(2) A permanent resident is not considered synonymous with a permanent room. Persons who rent or lease accommodations on a permanent basis to industries such as airlines or railroads or other persons for their employee's use are subject to the sales tax on the receipts from all these accommodations.

(3) Example: The Summit Hotel rents yearly accommodations to the Fly-Away Airlines for pilots and stewards. The Summit Hotel is subject to the sales tax on all Fly-Away accommodation receipts.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

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

Regarding the first provision, the commission found that the sums in question were not paid for admission as that term is commonly understood. The commission also found that accommodations were not the subject for which the sums were paid. With respect to the third provision, the commission found that the assessments did not apply to any separate fees charged for the use of petitioner's amenities but were based on charges for the time share occupancies.

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

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

12 CSR 10-3.218 Students

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

(1) An educational institution which furnishes room and board to the students in pursuit of their educational objectives is not subject to sales tax on the gross receipts from these services.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule nos. 5 and 50 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 020-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.220 Sales of Accommodations to Exempt Organizations

PURPOSE: This rule interprets the sales tax law as it applies to sales of accommodations to exempt organizations and interprets and applies sections 144.030.2(19), (20) and (22) and 144.080, RSMo.

(1) When accommodations, food and drinks are sold to an organization who has an exemption letter from the Department of Revenue and all billings are directly to the organization and paid for with their funds, the sales are not subject to the sales tax. If the billing is in an individual's name, it is subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-6 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

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

12 CSR 10-3.222 Transportation Fares

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

(1) Receipts derived from the intrastate transportation of persons for hire by persons operating buses and trucks licensed by the Missouri Public Service Commission are subject to tax. Also taxed are the receipts from the intrastate transportation of persons for hire by persons operating a railroad, sleeping car, dining car, express car or boat. Receipts derived from the intrastate transportation of persons for hire in air commerce, however, are not subject to sales tax.

(2) Taxi cabs, limousine services and local buses are not subject to tax.

(3) If a passenger is engaged in an interstate trip and purchases transportation between two (2) points in this state, the separate charges for this intrastate journey are subject to the sales tax. Lump sum charges of special charter means of conveyance are subject to the sales tax in the same manner as their individual fares.

(4) Purchases by persons on state or federal expense accounts where each respective government is directly responsible for the payment of the tickets are not subject to the sales tax only when paid for by a governmental draft.

(5) Persons selling meals, drinks, cigarettes, magazines, toiletries and other articles of tangible personal property to persons on intrastate or interstate trips are subject to the sales tax on the gross receipts from all sales in this state. Carriers operating facilities which sell tangible personal property or render taxable services, such as eating and sleeping facilities, are subject to the sales tax on the gross receipts from the sales in this state.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 58 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 020-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Dec. 30, 1983, effective April 12, 1984.*

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

Aloha Airlines v. Director of Taxation of Hawaii*, 104 S.Ct. 291 (1983). 49 U.S.C. section 1513(a) preempts state statutes and expressly prohibits states from taxing directly or indirectly gross receipts derived from interstate air transportation.*

12 CSR 10-3.224 Effective Date of Option
(Rescinded December 11, 1980)

AUTHORITY: section144.270, RSMo 1978. S.T. regulation 020-8 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

Op. Atty. Gen. No. 71, Buechner (4-8-77)*. A corporation involved in the rental and leasing of motor vehicles may elect either to pay sales tax at the time it receives the gross receipts from the rental or lease agreements or at the time of registration of motor vehicles. However, either election must include all motor vehicles held for rental or lease and a corporation with separately managed divisions may not elect to have one division pay Missouri sales tax at the time the vehicles are purchased and another division pay sales tax as rental proceeds are received from its customers.*

12 CSR 10-3.226 Lease or Rental

PURPOSE: This rule interprets the sales tax law as it applies to lease or rental receipts and interprets and applies sections 144.020 and 144.070, RSMo.

(1) The gross receipts from the sale of tangible personal property which are exempt from the sales or use tax on the sale of the property are similarly exempt from the sales tax on the total gross receipts from any lease or rental of the property. The gross receipts derived from a lease or rental of motor vehicles or trailers leased or rented by an authorized motor vehicle leasing company are subject to the sales tax. The gross receipts derived from a lease or rental of other tangible personal property upon which Missouri sales tax was not paid at the time of purchase are also subject to sales tax.

AUTHORITY: section 144.270, RSMo (1994). S.T. regulation 020-9 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 14, 1976, effective Dec. 11, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

Op. Atty. Gen. No. 71, Buechner (4-8-77)*. A corporation involved in the rental and leasing of motor vehicles may elect either to pay sales tax at the time it receives the gross receipts from the rental or lease agreements or at the time of registration of motor vehicles. However, either election must include all motor vehicles held for rental or lease and a corporation with separately managed divisions may not elect to have one division pay Missouri sales tax at the time the vehicles are purchased and another division pay sales tax as rental proceeds are received from its customers.*

Hal Aviation, Inc. v. Director of Revenue*, Case No. RS-79-0310 (A.H.C. 1/20/83). Taxpayer purchased airplanes pursuant to a resale exemption certificate thereby escaping the payment of sales tax on the purchase. Taxpayer then used some of the planes in the operation of a flight school prior to selling them. A sales tax assessment was issued against the taxpayer based upon the theory that the use of the planes by the taxpayer should be taxed pursuant to section 144.020.1(8), RSMo as a rental to the flying students. The court held that the use of these planes by the flying students was no more a rental than the use of classrooms by other types of students. The students paid valuable consideration for a service, the flying lessons, and not for the rental of the planes. Additionally, the court found that the department could not impose a tax on the theory that taxpayer evaded sales tax by the improper use of resale exemption certificates* *because this was not the basis of the audit and it went beyond the scope of the complaint and the answer. Note, that since the lease of the airplanes by students does not constitute a rental, sales or use tax would be owed to the state of Missouri on the original purchase of the plane.*

12 CSR 10-3.228 Lessors-Renters Include

PURPOSE: This rule indicates that a person may be a lessor or renter even though the location of the leased or rented article remains unchanged and interprets and applies sections 144.010 and 144.020, RSMo.

(1) Lessors and renters include those persons whose tangible personal property remains on their own premises, but which is operated by the lessee or is under the direct control of the lessee for a specified period of time.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-10 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 14, 1976, effective Dec. 11, 1976.*

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

12 CSR 10-3.230 Repair Parts for Leased or Rented Equipment

PURPOSE: This rule interprets the sales tax law as it applies to parts used in the repair of leased or rented equipment and interprets and applies sections 144.010 and 144.020, RSMo.

(1) Sellers of repair or replacement parts for use in repairing tangible personal property which is rented or leased are subject to the sales tax unless the lessor/renter provides the seller with a properly executed exemption certificate. In order to purchase repair or replacement parts tax exempt under an exemption certificate, the following requirements must be met:

(A) Tax must not have been paid on the property to be repaired at the time of purchase. An exception is motor vehicles or trailers leased or rented by an authorized motor vehicle leasing company which also paid sales tax on the vehicles when they were purchased;

(B) The repair or replacement of the property must be performed at no additional cost to the lessee of the property under the lease agreement; and

(C) The lessor must not use the property or parts in any manner other than holding them for the repair of or for replacement on leased or rental property or for resale.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-11 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.232 Maintenance Charges for Leased or Rented Equipment

PURPOSE: This rule interprets the sales tax law as it applies to maintenance charges for leased or rented equipment and interprets and applies sections 144.010 and 144.020, RSMo.

(1) When maintenance or repair charges or other incidental charges are included in a lease or rental contract, all charges are considered gross receipts.

(A) Example: L Corporation leases copy machines to various customers. As part of the lease agreement, L Corporation agrees to perform all maintenance and repair upon the copy machines. All of the gross receipts are subject to sales tax and no deduction is allowed for the maintenance agreement (also see 12 CSR 10-3.064).

(B) Example: J Corporation leases and ships equipment to persons in various areas of Missouri, separately stating the lease charge and the transportation charges. J Corporation is subject to sales tax on the lease price of the goods, including the transportation charges, as they were incurred prior to transfer of possession to the customer.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-12 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

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

12 CSR 10-3.233 Export Sales

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

(1) Sales made to customers located outside Missouri are not subject to the Missouri sales tax if title to the property passes at the customers' locations.

(A) Example: Mrs. Jones, a resident of Kansas, purchases by telephone a necklace from a Missouri seller and requests that the seller ship the necklace to her out-of-state residence. The transaction is not subject to Missouri sales tax as this transaction is deemed an export sale.

(2) When an out-of-state resident takes delivery at a Missouri location, the sale would be deemed to be consummated at the place of business of the seller and would be subject to Missouri sales tax unless a valid exemption certificate is issued to the seller at the time of purchase.

(A) Example: Mrs. Brown purchases a necklace at a Missouri seller location and has the seller ship the necklace to her sister located outside Missouri. The transaction is subject to Missouri sales tax.

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

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

***Kaiser Aluminum & Chemical Sales v. Director of Revenue**, Case No. RS-82-0303 (A.H.C. 10/28/83). The issue in this case was whether or not certain bricks shipped from a Missouri plant were subject to Missouri sales tax. It was necessary for the commission to determine where the sale took place. When no specific provision for the passage of title is contained in the agreement between the parties, the commission must look to other evidence such as industry practice, passage of risk of loss, party paying transportation costs and method and time of payment. The commission cited **Kurtz Concrete, Inc. v. Spradling**, 560 SW2d 858 (Mo. banc 1978) and **Frontier Bag, Inc. v. Director of Revenue**, Case No. R-80-0073 (A.H.C. 11/12/81). Finding that the goods were shipped F.O.B. from Mexico, Missouri, the commission held that petitioner manifested an intent to have title pass to the buyer at the time and place of shipment. The commissioner looked to section 400.2-401(2)(a), RSMo (1978) (Uniform Commercial Code) in reaching this conclusion. Therefore, the sale did take place in Missouri and tax was applicable.*

12 CSR 10-3.234 Permit Required
(Rescinded December 11, 1980)

AUTHORITY section 144.270, RSMo 1978. S.T. regulation 020-13 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug 13, 1980, effective Dec. 11, 1980.

***Op. Atty. Gen. No. 71, Buechner (4-8-77)**. A corporation involved in the rental and leasing of motor vehicles may elect either to pay sales tax at the time it receives the gross receipts from the rental or lease agreements or at the time of registration of motor vehicles. However, either election must include all motor vehicles held for rental or lease and a corporation with separately managed divisions may not elect to have one division pay Missouri sales tax at the time the vehicles are purchased and another division pay sales tax as rental proceeds are received from its customers.*

12 CSR 10-3.236 Domicile of Motor Vehicles
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 020-14 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.238 Leasing Motor Vehicles for Release
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 020-15 was last filed Dec. 31, 1975,effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 1, 1980.

12 CSR 10-3.240 Meal Tickets

PURPOSE: This rule interprets the sales tax law as it applies to the sale of meal tickets and interprets and applies section 144.010, RSMo.

(1) On the purchase of meal tickets, sales tax should be collected by the vendor at the time of sale. When redeemed for meals, no further sales tax should be imposed.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 020-16 was last filed as rule no. 11 Jan. 22, 1973, effective Feb. 1, 1973. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

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

12 CSR 10-3.242 Gross Sales Reporting Method
(Rescinded March 14, 1991)

AUTHORITY: section 144.270, RSMo 1986. S.T. regulation 021-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Oct. 24, 1990, effective March 4, 1991.

12 CSR 10-3.244 Trade-Ins

PURPOSE: This rule interprets the sales tax law as it applies to trade-in property on which tax previously has been paid and interprets and applies section 144.025, RSMo.

(1) Where any article is taken in trade as a credit or part payment on the purchase price of the article being sold at retail, the tax is computed only upon the portion, if any, of the purchase price in excess of the trade-in allowance, provided there is a bill-of-sale or other document showing the actual allowance made for the article traded in.

(2) A person who sells a motor vehicle, trailer, boat or outboard motor and purchases a replacement motor vehicle, trailer, boat or outboard motor or finalizes a contract to purchase a new replacement motor vehicle, trailer, boat or outboard motor within ninety (90) days before or after that sale is taxed only upon that portion, if any, of the purchase price of the replacement unit in excess of the sales price of the original unit, provided a notarized bill of sale and a copy of the purchase contract agreement, if applicable, showing the purchase price is presented to the Department of Revenue at the time of titling.

(3) In order to qualify for a replacement tax credit, a motor vehicle, trailer, boat or outboard motor must be replaced by a motor vehicle, trailer, boat or outboard motor, respectively. In addition, the replacement unit and the unit being replaced must be titled in the same owner's name(s).

(4) In order to determine if a motor vehicle, trailer, boat or outboard motor owner qualifies for a ninety (90)-day replacement tax credit based on the date of the purchase contract, the following conditions must be met:

(A) The date of the purchase contract and the sale of the replaced unit must be on or after May 31, 1994. May 31 is the earliest date which can be used in order for the ninety (90)-day time period to include the August 28, 1994, effective date of the new legislation;

(B) The date of the purchase contract and the sale of the replaced unit must be within ninety (90) days of each other; and

(C) A copy of the purchase contract for the new motor vehicle, trailer, boat or outboard motor and a copy of the notarized bill of sale for the unit being replaced must be submitted with the application for title or the request for refund if taxes have already been paid. The following is an example: On May 31, 1994, a vehicle owner sells a passenger motor vehicle. On August 1, 1994, the seller signs a purchase contract for a new passenger motor vehicle. Since both the sale and the contract to purchase occurred on or after May 31 and are within ninety (90) days of each other, the replacement credit will be allowed. The same would be true if the purchase contract was signed on May 31,1994, and the replaced vehicle sold on August 1, 1994.

(5) A person who purchases a replacement motor vehicle, trailer, boat or outboard motor as a result of a total loss due to theft or casualty will be taxed only that portion, if any, of the purchase price of the replacement unit in excess of the insurance proceeds received for the theft or casualty loss plus any owner's deductible obligation, provided a certification by the insurance company showing the amount of the insurance proceeds and deductible is presented to the Department of Revenue at the time of titling and the replacement motor vehicle, trailer, boat or outboard motor is purchased within ninety (90) days of the date of payment by the insurance company. This sales tax credit applies regardless of whether the unit was titled and insured in the same name.

AUTHORITY: sections 144.025 and 144.270, RSMo 1994. This rule was previously filed as rule no. 36 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 025-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Feb. 3, 1984, effective May 11, 1984. Amended: Filed Nov. 28, 1994, effective May 28, 1995.*

**Original authority: 144.025, RSMo (1963), amended 1977, 1979, 1985, 1986, 1994 and 144.270, RMSo (1939), amended 1941, 1943, 1945, 1947, 1955, 1961.*

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

PURPOSE: This rule sets forth general requirements which apply to a federal, state agency or Missouri political subdivision *claiming exempt status and interprets and applies section 144.030, RSMo.*

(1) Each agency must make written application on a form prescribed by the director of revenue for a letter of exemption to be issued.

(2) An exemption letter granted to a federal, state agency or Missouri political subdivision will be effective for five (5) years from the date of issuance of the letter.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 15, 1984, effective Feb. 11, 1985.*

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

***The Public School Retirement System of the City of St. Louis v. Director of Revenue**, Case No. RS-80-0125 (A.H.C. 2/8/84). The issue in this case was whether The Public School Retirement System of the City of St. Louis is exempt from sales tax as a public elementary or secondary school, a not-for-profit civic or charitable organization or a constitutionally tax-exempt political subdivision. The commission first noted that an agreement existed between the taxpayer and the Internal Revenue Service, whereby the Retirement System did not constitute a tax-exempt 501(c)(11) Teachers Retirement Fund, because it had more than an incidental number of nonteacher participants and a large amount of funding from gifts, devises, bequests and legacies, which was inconsistent with the provisions of Section 501(c)(11) of the **Internal Revenue Code**. The commission found that the taxpayer was not exempt under section 144.030.2(19), RSMo as a public elementary or secondary school, because it was specifically created by the general assembly as a body corporate, separate and distinct from the public schools of the City of St. Louis. The commission found that the taxpayer was not exempt under section 144.030.2(20), RSMo as a civic or charitable organization because, like the hospital at issue in **Frisco Employees' Hospital Assn. v. State Tax Comm.**, 381 SW2d 772 (Mo. banc 1964), it only provided benefits to its members. Finally, the commission found that collecting sales tax on purchases made by the Retirement System did not constitute the imposition of tax on property paid for out of the funds of a county or other political subdivision in violation of Mo. Const. Art. III, section 39(10) because the taxpayer was not a county or political subdivision. The commission rejected the taxpayer's argument that the funds which it received from the political subdivisions retained their character when they were used by the Retirement System to make purchases. Pointing out that the Retirement System is separate and independent from the St. Louis School District and that it receives funds from many sources other than the School District, the commission found that the funds in question had lost their character and ceased to be funds of a political subdivision.*

12 CSR 10-3.246 General Examples
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule No. 36 Jan. 22, 1993, effective Feb. 1, 1973. S.T. regulation 025-2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.247 Information Required to be Filed by a Federal, State Agency or Missouri Political Subdivision Claiming Exemption

PURPOSE: This rule sets forth the requirements which must be met by a federal, state agency or Missouri political subdivision making application for exemption and interprets sections 144.030 and 144.080, RSMo.

(1) A federal, state agency or Missouri political subdivision claiming exempt status pursuant to section 144.030.1, RSMo is required to file the following with the Department of Revenue:

(A) Application for Sales/Use Tax Exemption, Form DOR-1746 and Missouri Sales/Use Tax Exemption Application Affidavit, Form DOR-1922; and

(B) Any other documents, statements and information requested by the director of revenue.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 15, 1984, effective Feb. 11, 1985.*

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

***The Public School Retirement System of the City of St. Louis v. Director of Revenue**, Case No. RS-80-0125 (A.H.C. 2/8/84). The issue in this case was whether The Public School Retirement System of the City of St. Louis is exempt from sales tax as a public elementary or secondary school, a not-for-profit civic or charitable organization or a constitutionally tax-exempt political subdivision. The commission first noted that an agreement existed between the taxpayer and the **Internal Revenue Service**, whereby the Retirement System did not constitute a tax-exempt 501(c)(11) Teachers Retirement Fund, because it had more than an incidental number of nonteacher participants and a large amount of funding from gifts, devises, bequests and legacies, which was inconsistent with the provisions of section 501(c)(11) of the Internal Revenue Code. The commission found that the taxpayer was not exempt under section 144.030.2(19), RSMo as a public elementary or secondary school, because it was specifically created by the general assembly as a body corporate, separate and distinct from the public schools of the City of St. Louis. The commission found that the taxpayer was not exempt under section 144.030.2(20), RSMo as a civic or charitable organization because, like the hospital at issue in **Frisco Employees' Hospital Assn. v. State Tax Comm.**, 381 SW2d 772 (Mo. banc 1964), it only provided benefits to its members. Finally, the commission found that collecting sales tax on purchases made by the Retirement System did not constitute the imposition of tax on property paid for out of the funds of a county or other political subdivision in violation of Mo. Const. Art. III, section 39(10) because the taxpayer was not a county or political subdivision. The commission rejected the taxpayer's argument that the funds which it received from the political subdivisions retained their character when they were used by the Retirement System to make purchases. Pointing out that the Retirement System is separate and independent from the St. Louis School District and that it receives funds from many sources other than the School District, the commission found that the funds in question had lost their character and ceased to be funds of a political subdivision.*

12 CSR 10-3.248 Sales to the United States Government

PURPOSE: This rule interprets the sales tax law as it applies to sales to the United States government by citing a court case and interprets and applies sections 144.010 and 144.030, RSMo.

(1) All sales made to the United States government and its agencies are not taxable when purchased directly and paid for by warrants drawn on the United States Treasury. The term agencies includes, but is not limited to: United States post offices, United States hospitals, military post or base exchanges, Federal Bureau of Investigation and other

agencies whose activities are directly under federal control and paid for from the federal treasury. Federal savings and loan associations and national banks are subject to the sales tax and are not included in the definition of federal agencies (see *State ex rel. Thompson-Stearns-Roger v. Schaffner*, 489 SW2d 207 (1973)).

(2) Sales of tangible personal property, which are exempt from sales tax when purchased with federal government field purchase order (SF-44), are also exempt from sales tax when purchased with a United States government credit card under the following conditions:

(A) Purchases are limited to tangible personal property;

(B) Purchase of transportation, meals, entertainment or lodging with the United States government credit card will not be exempt from sales tax; and

(C) Total purchase at any one (1) time may not exceed one thousand dollars ($1000).

(3) All purchases for personal use or consumption are subject to sales tax.

(4) Each credit card purchase invoice/receipt, completed at the time of sale, must contain the following information which has been transferred by imprint from the credit card and credit card machine to the purchase invoice/receipt:

(A) Name of the individual to whom the card has been issued;

(B) An indication that the credit card is a United States government credit card and is for tax exempt purchase;

(C) Total amount of the purchase;

(D) Date of the purchase;

(E) Individual card number of the card holder; and

(F) Expiration date of the card.

(5) The purchase invoice/receipt must also contain the following information:

(A) Specific item(s) purchased;

(B) Cost of each item;

(C) Total cost of the item(s) purchased; and

(D) Signature of the authorized card holder.

(6) The seller must retain a properly executed receipt for each tax exempt transaction for a period of three (3) years from the date of the return on which the tax exempt sales are reported.

(7) Properly completed receipts for each tax exempt transaction must be retained by the taxpayer so they may be readily reconciled with the tax exempt sales for each reporting period.

(8) The department will disallow claims for tax exempt United States government credit card sales which are not supported by properly executed credit card receipts.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 2 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed Feb. 23, 1989, effective June 11, 1989.*

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

***State ex rel. Thompson-Stearns-Roger v. Schaffner**, 489 SW2d 207 (1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission. Purchases by a contractor of materials and supplies in performance of cost-plus contracts with the United States government are subject to sales tax, although the contract provides that title to the property purchased shall vest in the United States upon its delivery to the building site.*

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

12 CSR 10-3.249 Sales to Foreign Diplomats

PURPOSE: This rule interprets the sales tax law as it pertains to sales tax exemptions to foreign diplomats and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Foreign diplomats qualifying for a sales tax exemption under the provision of a treaty or agreement existing between the United States or Missouri and their respective country will be required to file an Application for Diplomatic Exemption, Missouri Sales Tax. A copy of the treaty or agreement must accompany the application.

(2) Those persons qualifying for the sales tax exemption will be issued a Foreign Government Exemption Card. The card should be displayed to the seller or vendor when purchases are made and all sales tickets must be signed. When the foreign diplomat's term expires, the exemption card must be returned to the Department of Revenue.

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

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

12 CSR 10-3.250 Sales to Missouri

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

(1) All sales made to Missouri are not taxable when purchased directly and paid for by warrants drawn on Missouri and an exemption letter is issued to the seller.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 1 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

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

***City of Springfield v. Director of Revenue**, 659 SW2d 782 (Mo. banc 1983). The issue in this case was whether or not the director of revenue could legally assess sales tax on concession, admission and use fees charged by the city park board. The Supreme Court found first that Mo. Const. Art. III, section 39(10), which prohibits a tax upon the "use, purchase or acquisition of property paid for out of the funds" of the city did not prohibit the imposition of tax upon the fees in question. There was no tax on the use, purchase or acquisition of property paid for from city funds. Secondly, the court found that section 144.020.1(2), RSMo brought the sale of recreational activities and concessions within the purview of the sales tax statute. The operation of the park and its facilities and services did constitute a business by a person making* *sales at retail and the park board did constitute a seller within the various definitions contained in section 144.010, RSMo.*

12 CSR 10-3.252 Hunting and Fishing Licenses

PURPOSE: This rule interprets the sales tax law as it applies to hunting and fishing licenses.

(1) Sales of Missouri hunting and fishing licenses are not subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-2A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.254 Sales to Missouri Political Subdivisions

PURPOSE: This rule interprets the sales tax law as it applies to sales to Missouri political subdivisions and interprets and applies sections 144.010 and 144.020, RSMo; Mo. Const. Art. III, subsection 39(10) and Art. X, subsection 15.

(1) Sales of tangible personal property made to a political subdivision, if paid for out of funds of those subdivisions, are not taxable. Political subdivisions include, but are not limited to, counties, townships, cities, school districts, road districts, library districts, water districts, nursing home districts and other subdivisions empowered to levy a tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 3 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***City of Springfield v. Director of Revenue**, 659 SW2d 782 (Mo. banc 1983). The issue in this case was whether or not the director of revenue could legally assess sales tax on concession, admission and use fees charged by the city park board. The Supreme Court found first that Mo. Const. Art. III, section 39(10), which prohibits a tax upon the "use, purchase or acquisition of property paid for out of the funds" of the city did not prohibit the imposition of tax upon the fees in question. There was no tax on the use, purchase or acquisition of property paid for from city funds. Secondly, the court found that section 144.020.1(2), RSMo brought the sale of recreational activities and concessions within the purview of the sales tax statute. The operation of the park and its facilities and services did constitute a business by a person making sales at retail and the park board did constitute a seller within the various definitions contained in section 144.010, RSMo.*

12 CSR 10-3.256 Sales Other Than Missouri or its Political Subdivisions

PURPOSE: This rule interprets the sales tax law as it applies to sales made to governments other than Missouri or its political subdivisions and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Sales made to states other than Missouri or to political subdivisions not located in Missouri are not exempt.

(2) Sales made to foreign governments, their residents, officials or employees are not exempt unless specifically provided in a law or treaty of the United States of America.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.258 Petty Cash Funds

PURPOSE: This rule interprets the sales tax law as it applies to sales paid for out of petty cash funds and interprets and applies sections 144.010 and 144.080, RSMo.

(1) Sales paid for with cash will be presumed to be taxable sales unless supported by an invoice or billing to the United States government, Missouri or any of its political subdivisions and a signed claim of exemption showing the title and position of the signatory and the identity of the governmental unit making the purchase.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-5 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.260 Nonappropriated Activities of Military Services

PURPOSE: This rule interprets the sales tax law as it applies to nonappropriated activities of military services and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Receipts from selling tangible personal property to nonappropriated fund activities of military services are not subject to the sales tax where there nonappropriated fund activities are declared to be instrumentalities of the United States by military regulations promulgated and signed by the secretary of the Army, Navy or Air Force.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-6 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***State ex rel. Thompson-Stearns-Roger v. Schaffner**, 489 SW2d 207 (1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.*

***United States v. New Mexico**, 455 U.S. 720, 102 S.Ct. 1373 (1982). New Mexico's sales tax was not invalid as applied to purchases made by contractors having contracts with the federal government for construction and repair work on government-owned property, even where title passed directly from vendors to the federal government.*

12 CSR 10-3.262 Government Suppliers and Contractors

PURPOSE: This rule interprets the sales tax law as it applies to the taxation of tangible personal property involving transactions of and to government suppliers and contractors, *and interprets and applies section 144.030, RSMo.*

(1) Tangible personal property which is used exclusively in the manufacturing, processing, modification or assembling of products sold to United States government or any of its agencies is tax exempt.

(2) Persons selling tangible personal property to contractors contracting with the United States government or its agencies, Missouri or Missouri political subdivisions, are subject to the sales tax on all sales, regardless of, to whom the contract or purchase order designates title is to pass (*see State ex rel. Thompson-Stearns-Roger v. Schaffner*, 489 SW2d 207 (1973)).

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 1 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-7 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***State ex rel. Thompson-Stearns-Roger v. Schaffner**, 489 SW2d 207 (1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.*

***United States v. New Mexico**, 455 U.S. 720, 102 S.Ct. 1373 (1982). New Mexico's sales tax was not invalid as applied to purchases made by contractors having contracts with the federal government for construction and repair work on government-owned property, even where title passed directly from vendors to the federal government.*

***Overland Steel, Inc. v. Director of Revenue**, 647 SW2d 535 (Mo. banc 1983). There were two issues in this case. The first was whether a taxpayer could claim a sales tax exemption for certain steel if sold, on the grounds that the purchasers were to use it in pollution control or plant expansion projects. The second was whether or not the transfer of steel to certain customers in Kansas was a sale subject to sales tax under the Commerce Clause of the **United States Constitution**. With respect to the first issue, the court found that the taxpayer had the burden of establishing that it was exempt from sales tax, and its failure to produce sales tax exemption certificates, coupled with the dearth of testimony concerning the exempt activities of taxpayer, fails to meet that burden. With respect to the second issue, the court found that when property is purchased subject to a resale certificate, the purchaser becomes liable for sales tax if the property is not resold. In this case the court found that because the taxpayer used the steel in question in its capacity as a contractor there was no resale. Therefore, the taxable event was the taxpayer's original purchase of the steel in Missouri. It was wholly irrelevant that the construction contract pursuant to which the steel was used was performed in Kansas. There was no violation of the Commerce Clause, and therefore, taxpayer was liable for tax.*

***Planned Systems Interiors, Ltd. v. Director of Revenue**, Case No. RS-85-0065, (A.H.C. 7/1/86). The petitioner's theory was that it was making a sale to an agency of the United States government and could not be required to pay sales tax.*

The Administrative Hearing Commission rejected petitioner's contentions and found that the taxpayer had a contractual relationship only as a subcontractor with K & S, the primary contractor and that the taxpayer sold the work stations to K & S pursuant to their contract. Under the department's regulations 12 CSR 10-3.028 and 12 CSR 10-3.262, this sale was subject to sales tax.

12 CSR 10-3.264 Repossessed Tangible Personal Property

PURPOSE: This rule interprets the sales tax law as it applies to sales of repossessed tangible personal property and interprets and applies section 144.010, RSMo.

(1) When banks, credit unions, savings and loan associations and other similar institutions acquire tangible personal property through repossession or foreclosure and where these properties are later sold by the creditors, the sales are subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 38 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-8 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.266 Sales to National Banks and Other Financial Institutions

PURPOSE: This rule interprets the sales tax law as it applies to sales to national banks and other financial institutions and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Persons selling tangible personal property or taxable service to national banks, other banks, credit unions or credit institutions and savings and loan associations, whether state or otherwise, are subject to the sales tax. Persons selling to federal reserve banks, federal land banks and federal credit unions are not subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 12 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-9 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***In Farm and Home Savings Association v. Spradling**, 538 SW2d 313 (1976) the court held sales tax is a tax upon gross receipts of the seller, not the purchaser. Consequently, exemption provisions of the "tax in lieu of other taxes" statute did not exempt the association from payment of sales tax because it was the purchaser, not the seller. Had the legislature intended to exempt savings and loan associations as purchasers from use tax, it would have declared the intent in the act itself or specifically so provided in the exemption statute applicable to savings and loan associations.*

12 CSR 10-3.268 General Rule
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-10 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.270 Carbon Dioxide Gas

PURPOSE: This rule interprets the sales tax law as it applies to sellers of carbon dioxide gas and interprets and applies sections 144.010 and 144.030.2(2), RSMo.

(1) Persons selling carbon dioxide gas to be used in producing carbonated water would not be subject to the sales tax since the gas becomes an ingredient or component part of the end product.

(2) Persons selling carbon dioxide gas to be used as a lifting agent for soft drinks or beer are subject to the sales tax since the gas does not become an ingredient or component part of the soft drink or beer.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-11 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.272 Motor Fuel and Other Fuels

PURPOSE: This rule interprets the sales tax law as it applies to sellers of motor fuels and other fuels, and interprets and applies sections 144.010, 144.030.2(1) and (22), RSMo.

(1) Persons selling motor fuel or special fuel in Missouri which is subject to a motor fuel or special fuel tax are not subject to the sales tax on the receipts from these sales. If the special fuel has no special fuel tax imposed or if the special fuel tax is refunded, it is subject to sales tax, unless otherwise exempted. Other fuels are subject to the sales tax when sold without regard to quantity or price unless specifically exempted under the sales tax law.

(2) Fuel is not subject to the sales tax when sold for the purpose of pumping or propelling water ultimately sold at retail. Likewise, the sale of fuel to be consumed in manufacturing or in creating gas, power, steam or electrical current to be ultimately sold at retail is not subject to the sales tax. Fuel is subject to the sales tax when sold for consumption by bakeries for baking their products or heating their establishments, by foundries and steel mills for the purpose of melting ores and by railroads within Missouri.

(3) When fuel is purchased for both exempt and taxable purposes, the purchaser must state at the time of purchase what portion of the fuel will be used for exempt purposes as opposed to the portion that is taxable.

(4) Example: The Big D Company sells fuel oil to the Sky High Utility Company for use in creating electricity and pumping water and natural gas to its customers. The Big D Company is not subject to the sales tax on fuel oil sold for this purpose. The sale of fuel oil to the utility company for use in heating its buildings is subject to the sales tax. The Big D Company must obtain a segregation of use statement at the time of sale.

(5) The amount of propane or natural gas, electricity or diesel fuel which is used exclusively for drying agricultural crops is entitled to sales tax exemption. If all of the electricity purchased through a single meter is used for drying agricultural crops, the purchaser should provide a written exemption certificate to the electric company so that all electricity is purchased tax free. If the electricity purchased through a single meter is used for multiple purposes such as domestic use and farm business use and the purchaser has been categorized as a domestic use customer by the electric company, the electric company should not charge sales tax on any of the electricity. At the end of the year when the purchaser is preparing his/her state and federal income tax returns (including Schedule F), s/he will take an income tax deduction for the amount of electricity used in his/her farming business. The purchaser will also be required to show to the Missouri Department of Revenue how much of the farm business electricity was used exclusively for drying crops and how much was used in other facets of his/her farm business. If the purchaser is categorized as a nondomestic use customer by the electric company, s/he will be required to pay sales taxes on the entire amount of electricity purchased. At the end of the year when the purchaser is preparing his/her state and federal income tax returns (including Schedule F), s/he will file an application for refund of sales tax for the electricity used for domestic purposes as well as the amount used exclusively for drying agricultural crops. If the total amount of propane gas in a single tank is used for drying agricultural crops, the purchaser should provide a written exemption certificate to the propane seller so that all propane gas is purchased tax free. If the purchases of propane gas in a single tank are used for multiple purposes such as domestic use and farm business use and primary use is a nondomestic use, the customer should notify the propane gas seller to categorize him/her as a nondomestic use customer and s/he will be required to pay sales tax on the entire amount of propane gas purchased. The customer will compute underpayments and overpayments of tax at the end of the year in the same manner as provided previously for electricity and make appropriate payments and refund request in the same manner. Purchasers of diesel fuel to be used exclusively for drying agricultural crops are guided by the same principles set out previously for electricity and propane gas. Purchasers of diesel fuel, propane or natural gas to be used exclusively for drying crops must maintain a separate tank for those purposes unless the only other purpose for which the fuel is used is a nonbusiness domestic use. Diesel fuel which is to be used for drying agricultural crops as well as other farm business purposes may not be purchased under claim of exemption unless the fuel for drying is segregated at the time of purchase into a separate tank used exclusively for that purpose.

(6) One-half (1/2) of each purchase of diesel fuel which is used to operate tax exempt farm tractors and tax exempt farm machinery is itself tax exempt. In order to properly claim tax exemptions for this purpose, the purchasers should maintain separate fuel tanks which are used ONLY to power the exempt items. A written claim of exemption must be on file with the seller for each purchase of fuel. When selling diesel fuel to be used for tax exempt machinery, the seller should divide the total purchase price by two (2) and compute tax only on one-half (1/2) of the purchase price. Under no circumstances should a purchaser use tax exempt diesel fuel for any purpose except the operation of tax exempt farm machinery. A purchaser should maintain adequate records to substantiate the use made of all diesel fuel purchased under a claim of exemption.

(7) All sales of metered water service; electricity; electrical current; natural, artificial or propane gas; wood; coal or home-heating oil for domestic use are exempt from tax. Also exempted is unmetered water service to residents of the City of St. Louis for domestic use. Domestic use means that portion which the individual purchaser does not use for a business, commercial or industrial purpose. Each seller of metered water service; electricity; electrical current; natural, artificial or propane gas service; and unmetered water service in the City of St. Louis shall establish and maintain a system, based upon the apparent or declared predominant use purpose of the purchaser, where individual purchases are

classified as domestic use or nondomestic use based upon principal use. No seller shall charge sales tax on purchases classified as domestic use. Sellers shall charge sales tax upon the entire amount of purchases classified as nondomestic use. Each person making domestic use purchases of services or property and who uses any portion of the services or property so purchased for a nondomestic use, by the fifteenth day of the fourth month following the year of purchase, and without assessment, notice or demand, shall file a return and pay sales tax on that portion of nondomestic purchases. Each person making nondomestic purchases of services or property and who uses any portion of the services or property so purchased for domestic use, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, may apply for credit or make refund to the director of revenue and the director shall give credit or make refund for taxes paid on the domestic use portion of the purchase.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 46 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-12 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Dec. 3, 1985, effective Feb. 24, 1986.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***In Hern v. Carpenter**, 312 SW2d 823 (1958), where subsection 144.030.2, RSMo exempts plaintiffs, who are farmers (purchasers) and a corporate distributor (seller) of motor fuel, from payment of sales tax on sales and purchases of such fuel, the court held all sales of gasoline are exempt from liability for sales tax, including those sales where purchaser declares his intention not to use gasoline for highway purposes and in fact obtains a refund of motor fuel tax paid.*

***Missouri Public Service Company v. Director of Revenue**, 733 SW2d 448 (Mo. banc 1987). Since there is no statutory definition of fuel, the Supreme Court attributed to the work its plain and ordinary meaning. The court found Rolfite exempt from use tax because it is a fuel material which produces heat by burning and is consumed in the manufacture of electricity. The court stated that the fact Rolfite is used primarily for other purposes does not change its essential functional character as a fuel.*

***Lady Baltimore of Missouri, Inc. v. Director of Revenue**, Case Nos. RS-83-2819 and RS-83-2820 (A.H.C. 9/9/87). The petitioner argued that it is exempt under 144.030.2(1), RSMo because diesel fuel is subject to the special fuel tax. The Administrative Hearing Commission held that where the special fuel tax is not paid upon purchase, the fuel is not subject to an excise or sales tax under another law of the state and the sales tax exemption does not apply. Therefore sales tax is due and payable.*

The taxpayer in the alternative argued that the respondent was required to collect the tax from the vendor rather than the petitioner as a purchaser. The Administrative Hearing Commission found that under the facts of this case that the petitioner had purchased the special fuel under an improper claim of exemption and was therefore liable for sales tax.

12 CSR 10-3.274 Farm Machinery and Equipment.

PURPOSE: This rule interprets the sales tax law as it applies to farm machinery and equipment, and interprets and applies sections 144.010 and 144.030.2(22), RSMo.

(1) Farm machinery and equipment are exempt from tax if used exclusively and directly for the production of crops as a business or for the raising and feeding of livestock, fish or poultry or of producing milk for ultimate sale at retail.

(2) Farm machinery is defined as machines or components thereof contributing to the agricultural production process. Farm machinery includes, but is not limited to, the following: tractors, combines, balers, irrigation equipment, livestock and poultry feeders.

(3) Farm equipment is defined as any independent device or apparatus separate from any machinery, but essential to production agriculture. Such equipment includes, but is not limited to augers, grain dryers (heaters and fans), automated livestock feeder bunks (but not ordinary building materials), automatic stock waterers, water pumps serving production areas, heating or lighting equipment specifically required by the production process, (that is, ultraviolet lights) and special heaters for incubation. General heating, lighting and ventilation equipment for non-production areas does not qualify as farm equipment. In addition, equipment designed for and essential to production agriculture attached to real property shall be considered farm equipment. Such equipment includes, but is not limited to, special livestock flooring. A tractor or other machinery that qualifies for the exemption may include options or accessories that are not farm equipment. However, these items are exempt only if installed and sold as an integral part of the qualifying machine and in a single transaction. Equipment used in farm management such as communications and office equipment, repair, service, security or fire protection equipment, is not farm equipment.

(4) The following categories of items are excluded from the meaning of the terms farm machinery and farm equipment and are subject to tax:

(A) Containers and storage devices such as oil and gas storage tanks, pails, buckets and cans;

(B) Hand tools and hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks, shovels, brooms, wrenches, pliers and grease guns;

(C) Attachments and accessories not essential to the operation of the machinery itself (except when sold as a part of the assembled unit) such as cigarette lighters, radios, canopies, air conditioning units, cabs, deluxe seats, tool or utility boxes and lubricators; and

(D) Drainage tile, fencing materials, building materials and grain bins for storage of grain for resale.

(5) Under no circumstances can a motor vehicle or trailer ever be treated as tax exempt farm machinery. For the purpose of these guidelines, the term motor vehicle and trailer have the same meaning as those terms are defined under the titling and licensing laws of Missouri (Chapter 301, RSMo).

(6) Farm machinery includes aircraft used solely for aerial application of agricultural chemicals.

(7) Machinery or equipment that would otherwise qualify as exempt farm machinery and equipment will not lose its exempt status merely because the machinery or equipment is modified or specially made to be attached to a motor vehicle. When farm machinery or equipment, which has been previously purchased under a valid claim of exemption and subsequently attached to a motor vehicle, is sold together with the motor vehicle to which it was attached, the part of the total sales price attributable to the farm machinery or equipment is exempt from sales tax, if the farm machinery or equipment is separately invoiced.

(8) Under no circumstances can an item be treated as tax exempt farm machinery unless it is used on land owned or leased by the purchaser for the purpose of producing farm products. This condition will be met where the machinery is used on a bona fide farm. Schedule F of the Federal Income Tax Return may be required to verify farm operation.

(A) Example: A construction company which purchases a farm tractor to be used on construction sites is not entitled to a sales tax exemption. A hotel or resort which purchases a farm tractor for grass cutting, snow plowing or other general chores on the premises is not entitled to a sales tax exemption.

(9) Under no circumstances may an item be treated as tax exempt farm machinery unless it is either used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or used directly in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail.

(A) In determining whether items are used directly, consideration must be given to the following factors:

1. Where the items in question are used;
2. When the items in question are used; and
3. How the items in question are used to produce a farm product.

(B) The fact that particular items may be considered to be essential or necessary will not automatically entitle it to exemption. For example, equipment used for the storage of grain or other items for future sale after the production process is complete will not be exempt from taxation since those storage items are not used directly in the production of farm products. Equipment used for the storage of grain to be fed to livestock would, however, be considered items used directly in the production process. The term "used directly" encompasses items which are used in some manner prior to the actual commencement of production, during production, or in some manner after the production has terminated, but before storage of the processed item occurs.

(10) Repair and replacement parts purchased for use on farm machinery are exempt from tax. Included in the repair and replacement part category are batteries, tires, fan belts, mufflers, spark plugs, oil filters, plow points, standard-type motors and cutting parts. In order for an item to qualify as a tax exempt repair or replacement part for farm machinery or equipment, the item must be used exclusively on tax exempt farm production machinery. Consumable supplies such as grease, oil and antifreeze are not considered repair and replacement parts and are taxable items.

(11) Machinery and equipment are not exempt unless used exclusively for agricultural purposes. Machinery and equipment used for a dual purpose, one purpose being agricultural and the other being nonagricultural, are not exempt. An example of nonexempt dual use would be a farm tractor used for farm production and also used to perform roadwork and repairs on the farm or elsewhere.

(12) The Department of Revenue will presume that all retail sales of property are taxable unless the seller keeps on file a written claim of exemption signed by the purchaser. The official Farmer's Exemption Certificate published by the Department of Revenue should be used for that purpose. A claim of exemption must be accepted in good faith by the retailer/seller. A claim of exemption on the purchase/sale of an item listed in this regulation as "Usually Taxable" will be presumed not to have been taken in good faith.

(13) Schedule A is a list of items of farm machinery and equipment which will usually be exempt if used exclusively for agricultural purposes, on land owned or leased for the purpose of using farm products and used directly in producing farm products or livestock to be sold ultimately at retail. Schedule A follows the body of this rule.

(14) Schedule B is a list of items which the Department of Revenue has deemed to be usually nonexempt. Schedule B follows the body of this rule.

Schedule A—
Usually Exempt Items

Artificial insemination equipment
Augers
Bale loader
Bale transportation equipment
Baler twine
Baler wire
Balers
Binder twine
Binders
Brooders
Bulk feed storage tanks
Bulk milk coolers
Bulk milk tanks
Calf weaners and feeders
Cattle currying and oiling machine
Cattle feeder, portable
Chain saws for commercial use in harvesting timber, lumber and in orchard pruning
Chicken pluckers
Choppers
Combines
Conveyors, portable
Corn pickers
Crawlers, tractor
Crushers
Cultipackers
Cultivators
Curtains and curtain controls for livestock and poultry confinement areas
Debeakers for productive animals
Dehorners for productive animals
Discs
Drags
Dryers
Dusters
Egg handling equipment
Ensilage cutters
Fans, livestock and poultry
Farm tractors
Farm wagons
Farrowing houses, portable
Farrowing crates
Feed carts
Feed grinders/mixers
Feed storage bins
Feeders
Fertilizer distributors
Flooring slats
Foggers
Forage boxes
Forage harvester
Fruit graters
Fruit harvesters
Generators
Gestation crates
Grain augers
Grain binders
Grain conveyors
Grain drills
Grain elevators, portable
Grain handling equipment
Grain planters
Harrows (including spring-tooth harrow)
Hay loaders
Head gates
Heaters, livestock and poultry
Hog feeders, portable
Hoists, farm
Husking machines
Hydro-coolers
Incubators
Irrigation equipment
Livestock feeding, watering and handling equipment
Manure handling equipment (including front- and rear-end loaders and blades)
Manure spreaders
Milk cans
Milk coolers

Milk strainers
Milking equipment (including bulk milk refrigerators, coolers and tanks)
Milking machine
Mowers, hay and rotary blade used exclusively for agricultural purposes
Panels, livestock
Pickers
Planters
Plows
Poultry feeder, portable
Pruning and picking equipment
Repair and replacement parts for exempt machinery
Rollers
Root vegetable harvesters
Rotary hoes
Scales
Seed cleaners
Seed planters
Seeders
Shellers
Silo unloaders
Sorters
Sowers
Sprayers
Spreaders
Sprinkler systems, livestock and poultry
Squeeze chutes
Subsoilers
Threshing machines
Tillers
Tires for exempt machinery
Tractors, farm
Vacuum coolers
Vegetable graders
Vegetable washers
Vegetable waxers
Wagons, farm
Washers, fruit, vegetable and egg
Waxers
Weeders

Schedule B—
Usually Taxable Items

Acetylene torches
Air compressors
Air tanks
All-terrain vehicles (3-, 4- and 6-wheel)
Antifreeze
Automobiles
Axes
Barn ventilators
Brooms
Brushes
Building materials and supplies
Bulldozers
Cement
Chain saws
Cleansing agents and materials
Construction tools
Ear tags
Electrical wiring
Equipment and supplies for home or personal use
Fence building tools
Fence posts
Field toilets
Fire prevention equipment
Fuel additives
Garden hose
Garden rakes and hoes
Gasoline tanks and pumps
Golf carts
Grain bins for storage of grain for resale
Greases and oils
Hammers
Hand tools
Hog ringers
Hog rings
Hydraulic fluid
Lamps
Lanterns
Lawnmowers
Light bulbs
Lubricating oils and grease
Marking chalk
Nails
Office supplies and equipment
Packing room supplies
Personal property installed in or used in housing for farm workers
Post hole diggers (except commercial use in tree farms)
Pumps for household or lawn use
Pumps, gasoline
Refrigerators for home use
Repair tools
Road maintenance equipment
Road scrapers
Roofing
Sanders
Shovels
Silos
Small tools
Snow fence
Snowplows and snow equipment
Staples
Supplies for home or personal use
Tanks, air
Tanks, gasoline
Tools for repair construction
Tractors, garden
Truck beds
Water hose
Welding equipment
Wire, fencing
Wrenches

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-13 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed April 7, 1986, effective June 28, 1986. Amended: Filed Feb. 26, 1987, effective May 28, 1987. Amended: Filed Sept. 28, 1995, effective May 30, 1996.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***Charles A. Johnson, Jr. v. Director of Revenue**, Case Nos RS-83-3258 and RS-83-3259 (A.H.C. 5/1/86). The Administrative Hearing Commission found the petitioner was not entitled to an exemption for his seed cleaner and conveyor for two reasons. First, petitioner used the equipment for commercial processing of soybeans other than his own, a use clearly not within the requirement that the equipment be used exclusively and directly for the production of farm products as required by 144.030.2(22), RSMo and further excluded from exemption by 12 CSR 10-3.274(8) because the commercial cleaning operation was not an agricultural use of the cleaning equipment.*

***Henderson Implement Co., Inc. v. Director of Revenue**, Case No. RS-86-0170 (A.H.C. 6/16/88). The Administrative Hearing Commission held that the taxpayer met its burden of proving that soilmovers were farm machinery within the meaning of the statute. The soilmover was found to be essential to production of farm crops on low-lying land and the farmers used the equipment exclusively for such purposes and the link between controlling drainage on the farmland and the production of the crops is a direct relationship. Therefore, the Administrative Hearing Commission concluded that the soilmovers were exempt from sales tax.*

12 CSR 10-3.276 Sales of Baling Wire, Baling Twine and Binder Twine
(Rescinded June 28, 1986)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 34 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-14 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed April 17, 1986, effective June 28, 1986.

12 CSR 10-3.278 Agricultural Feed and Feed Additives

PURPOSE: This rule interprets the sales tax law as it applies to sellers of agricultural feed *and feed additives, and interprets and applies section 144.030.2(22), RSMo.*

(1) Feed for livestock and poultry is not subject to the sales tax if the animal consuming the feed is intended to be sold ultimately at retail in processed form, or otherwise, or if the products from the animal will be sold. Feed, purchased by dairymen and fed to dairy cows producing milk, cream or butter, to be sold at retail, is not subject to the sales tax. Feed purchased by poultrymen to feed chickens, when either the chickens or eggs are later sold at retail, is not subject to the sales tax.

(2) When feeding livestock when the livestock is used on the farm or when feeding poultry or dairy cows when the farmer personally consumes the product, the feed is subject to the sales tax. A farmer must be in the business of regularly selling products to purchase feed tax exempt.

(3) Feed is to include all edible food which directly furnishes substances essential for growth, fattening or nourishment of livestock and poultry which is later sold at retail or the products produced from the livestock or poultry are later sold at retail.

(4) Medications or vaccines, all sales of pesticides, and all sales of bedding which are to be administered or given to livestock or poultry in the production of food or fiber are tax exempt. Examples include hormones, digestive aids, antibiotics, hog wormers, tonics and medical preparations.

(5) Feed additives are tax exempt. The term feed additives means tangible personal property, including medicine or medical additives, which, when mixed with feed for livestock or poultry is to be used in the feeding of livestock or poultry, provided that the resultant mixture constitutes feed whose basic properties as feed have been altered so as to be unsuitable for free feeding.

(6) Signed exemption certificates must be executed by the purchaser and retained by the seller in support of all claimed exemptions.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 60 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-15 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.280 Sale of Agricultural Products by the Producer

PURPOSE: This rule interprets the sales tax law as it applies to sales of agricultural products by the producer and interprets and applies section 144.030.2(22), RSMo.

(1) All persons, such as farmers and fruit or vegetable peddlers, selling agricultural products such as milk, cream, butter, vegetables, fruit, eggs, meat, livestock, poultry, flowers and harvested crops to users and consumers from roadside stands, vehicles, trailers or established market places, even though the products may be raised or purchased by them, are subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 61 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-16 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.282 Sales of Seed, Pesticides and Fertilizers

PURPOSE: This rule interprets the sales tax law as it applies to sales of seed, pesticides and fertilizers, and interprets and applies section 144.030.2(22), RSMo.

(1) Persons selling seed, pesticides and fertilizers to contractors or other persons for nonagricultural use are subject to the sales tax on the gross receipts from all these sales. Sales of fertilizer for lawns, shrubbery and similar ornamental uses, seed for ornamental purposes, and minerals such as shale and feed for pets are examples of sales subject to the sales tax.

(2) Persons selling seed, pesticides, lime and fertilizers when used for planting or conditioning soil, which soil crops when harvested will be sold at retail, fed to livestock or poultry (which will either be sold at retail in processed form or converted into foodstuffs), or any derived product, for example milk, butter, eggs and the like which will be ultimately sold for final use or consumption, are not subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 62 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-17 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.284 Poultry Defined

PURPOSE: This rule provides a definition of the term poultry for purposes of the sales tax law and interprets and applies section 144.030.2(22), RSMo.

(1) Poultry is defined as any domesticated bird normally raised or grown as food for human consumption such as adult and baby chickens, turkeys, ducks, guinea fowl and geese.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-18 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***Exotic Animal Paradise, Inc. v. Director of Revenue**, Case Nos. RS-83-2797, RS-83-2798 and RS-83-2799 (A.H.C. 2/18/86). The taxpayer purchased and maintained animals for display in its wild animal park. The Administrative Hearing Commission determined that these animals were neither poultry nor livestock normally raised or grown as food for human consumption.*

12 CSR 10-3.286 Livestock Defined

PURPOSE: This rule provides a definition of the term livestock for purposes of the sales tax law and interprets and applies section 144.030.2(22), RSMo.

(1) Livestock is defined as an animal normally raised or grown as food for human consumption such as cattle, swine and sheep. Other animals not normally raised or grown as food for human consumption such as horses, cats, dogs, chinchillas and laboratory animals such as rats, mice, hamsters, primates and guinea pigs are not livestock and feed for these animals is subject to the sales tax.

(2) Example 1: A rabbit farmer raises rabbits which are sold for processing as food for

human consumption. Persons selling the feed would not be subject to sales tax as the rabbits are considered livestock in this situation.

(3) Example 2: A person selling feed to a pet shop raising rabbits which are sold to the general public for pets is subject to the sales tax on the feed at the time of sale. Persons selling rabbits for pets are subject to the sales tax on the gross receipts from all these sales.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-19 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***Exotic Animal Paradise, Inc. v. Director of Revenue**, Case Nos. RS-83-2797, RS-83-2798 and RS-83-2799 (A.H.C. 2/18/86). The taxpayer purchased and maintained animals for display in its wild animal park. The Administrative Hearing Commission determined that these animals were neither poultry nor livestock normally raised or grown as food for human consumption.*

12 CSR 10-3.288 Florists

PURPOSE: This rule interprets the sales tax law as it applies to florists and interprets and applies sections 144.010 and 144.030, RSMo.

(1) Persons selling flowers and flower arrangements, bouquets, wreaths, seeds, plants, shrubs, trees or any other articles of tangible personal property are subject to the sales tax on all these sales.

(2) A Missouri florist, who receives the original order and subsequently wires that order either to another instate florist or an out-of-state florist for delivery, is subject to the sales tax on these transactions. Where an outstate florist accepts the original order and telegraphs the order to a Missouri florist, the Missouri florist is not subject to the Missouri sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 63 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-20 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.290 Sellers of Poultry

PURPOSE: This rule interprets the sales tax law as it applies to sellers of poultry and interprets and applies sections 144.010 and 144.030.2(22), RSMo.

(1) Persons, such as those operating hatcheries, selling poultry are subject to the sales tax on the gross receipts from all sales of poultry which are not for resale. Exemption certificates must be retained by those persons as evidence that the sales made by them are exempt under the conditions of a sale for resale.

(2) Sellers of poultry are not subject to the sales tax when the poultry is sold to persons who raise the poultry for subsequent sale to a food processor or who raise the poultry for a dual purpose of egg production and ultimate sale to a food processor.

(3) Services, such as hatcheries or rendering custom hatching, are not subject to the sales tax, provided the service charges are segregated on the billing from sales of poultry at the time the charges are made.

(4) Persons selling feed to be fed to poultry, which will ultimately be sold in dressed or processed form, or the product from poultry, such as eggs, which will be sold, are not subject to the sales tax.

(5) Sales of poultry to persons for the sole purpose of producing eggs, which eggs are later sold at retail, are subject to the sales tax.

(6) A seller is subject to the sales tax on the total gross receipts when a purchaser is not able to readily establish or determine the number of poultry which will be used or consumed at the time of purchase as opposed to the number purchased for resale. Normal mortality is not use or consumption.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 65 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-22 was last filed Dec. 5, 1975, effective Dec. 15, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***P.F.D. Supply Corporation v. Director of Revenue**, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The commission, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.*

*Relying on its previous decision in **Blueside Co. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84) the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to **Blueside**, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.*

*However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in **Overland Steel, Inc. v. Director of Revenue**, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, Art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the **Overland Steel** case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2) in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.*

Finally, the commission held that 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

PURPOSE: This rule defines ingredients or component parts for purposes of the sales tax law and interprets and applies section 144.030.2(2) and (5), RSMo.

(1) In order to be considered as ingredients or component parts of the new personal property resulting from manufacturing, or otherwise, the materials must be purchased by the manufacturer for the purpose of becoming a recognizable, essential and basic ingredient or component part of the new personal property which is to be ultimately sold for final use or consumption. Materials qualify for this exemption only to the extent that they become an ingredient or component part of the new personal property.

(2) Materials which through accident, wear or similar means become incorporated within the product for sale are not exempt because they were not purchased for the purpose of becoming an ingredient or component part of new personal property which will ultimately be sold for final use or consumption.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 77 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-23 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***The Blueside Companies, Inc. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84). The issue in this case was whether chemicals used by the taxpayer in its hide processing operation were partially or totally exempt from sales/use taxes under section 144.030.2(2), RSMo (Supp. 1983) as “materials. . . which when used. . . become a component part or ingredient of the new personal property resulting from such manufacturing, processing, compounding, producing or fabricating. . . .”*

The Administrative Hearing Commission ruled that section 144.030.2(2) did not just apply to manufacturers. The statute applied instead to materials used in manufacturing. It is the goods that are used, not the purchaser of the goods, which defines the extent of the exemption.

Secondly, the commission found that the taxpayer was entitled to claim the exemption even though it actually performed the work in question on a contractual basis. It is not necessary that the taxpayer be manufacturing its own goods, and even if it were, as noted previously, the exemption in question is not limited to manufacturers but to manufacturing, etc. The fact that the taxpayer worked on a contract basis was irrelevant.

The commission also found that the key to whether materials become a component part or ingredient of the new personal property was whether the taxpayer purchased them for its own use and consumption or for resale. Looking to legislative history the court found that section 144.030.2(2) was in fact simply a repetition of the exclusions already inherent in the definitional provisions of section 144.010(8) defining “sale at retail.”

*While acknowledging that on two previous occasions courts of the state of Missouri have ruled in the taxpayer’s favor in cases similar to this one, the commission noted that such rulings were not in accordance with either the well-established rule that exemption statutes must be strictly construed against the taxpayer or the historical purpose of the statute as it was explained in **Southwestern Bell Telephone v. Morris**, 345 SW2d 62 (Mo. En Banc 1961). The commission noted that courts in other states have consistently ruled that the component part exemption is akin to the sale-for-resale philosophy and that chemicals which are not detectable in the finished product do not constitute component parts. Numerous cases from other jurisdictions were cited. Moreover, the mere presence of traces of a chemical in a final product does not make the chemical a component part. The court cited as an example microscopic particles of water vapor and other gases which are left in mined coal by explosives. These trace chemicals do not make the explosives a component part.*

The court also cited the elimination of double taxation as the rationale for the component part exemption. Therefore, if the presence of a material in a finished product is merely incidental then the material was not purchased for resale and the purchase should be taxable. In the case at hand the court noted that various products that were purchased to form chrome-tan were totally retained in the product. These materials should be exempt because they were purchased with the intent that they would be resold as part of the product.

The commission distinguished cases where part of the material was intended to become a component part. While some states have taken the position that the purchase of a material with the intention that part of it shall remain in the product at the time of resale will exempt all of the material, the commission took the position that only the part which was intended to become a component part should be exempt, noting that section 144.030.2(2) expressly provides that exemptions for various materials only apply to the extent they are incorporated into products which are intended for resale.

***Hardee’s of Springfield, Inc., et al. v. Director of Revenue**, Case No. RS-82-2181 (A.H.C. 6/11/85). The issue in this case was the imposition of use tax upon shortening used for deep frying foods at petitioner’s restaurants. Petitioner asserted that use tax was not due on any of the shortening because it became an ingredient or component part of new personal property and thus exempt as provided by section 144.030.3(1), RSMo (1978). The director countered that petitioner had to be a manufacturer to qualify for this exemption and that no exemption was proper unless the ingredient was totally incorporated into the new product.*

*The Administrative Hearing Commission cited **Blueside Company v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84) for the proposition that the exemption also applies to processing. However, again citing **Blueside**, the commission held that the ingredient or component part exemption is only applicable to the extent that the article is incorporated in new property. In addition, those articles whose presence in the final product is not necessary or essential are not exempt. The commission found that 50% of the shortening in question was absorbed and therefore exempt.*

The bulk of the unabsorbed shortening was sold for salvage. Petitioner contended that this salvage sale constituted a retail sale and that its use of shortening was therefore exempt under section 144.615, RSMo (1978) as property held for resale in the regular course of business. However, the commission rejected petitioner’s argument by stating, “If the by-product is an inconsequential portion of the taxpayer’s business and the by-product is sold as salvage primarily to avoid the cost of refuse collection, the articles in the by-product would not be exempt from use tax because those articles would be held substantially for use and not for resale.”

__P.F.D. Supply Corporation v. Director of Revenue__, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The Administrative Hearing Commission, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.

Relying on its previous decision in __Blueside Co. v. Director of Revenue__, Case No. RS-82-4625 (A.H.C. 10/5/84), the Administrative Hearing Commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to __Blueside__, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the user and the sale to that restaurant was a taxable retail sale.

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in __Overland Steel, Inc. v. Director of Revenue__, 647 SW2d 535 (Mo. En Banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, Art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the __Overland Steel__ case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2) in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.

Finally, the commission held that 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

PURPOSE: This rule interprets the sales tax law as it applies to component parts and interprets and applies section 144.030.2(4) and (5), RSMo.

(1) Sellers of parts to manufacturers or other producers who sell component parts or substances or who physically incorporate property as an ingredient or constituent of other tangible personal property which they manufacture or otherwise produce and sell are not subject to the sales tax. This exemption is applicable to the extent that the property or its reduced component substances are resold or incorporated into tangible personal property intended to be ultimately sold at retail for use or consumption. Property which is used or consumed in the manufacturing or other production process, but not physically incorporated into tangible personal property for ultimate retail sales as a product which the

producer or manufacturer produces or sells, is subject to the sales tax.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 77 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-24 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***The Blueside Companies, Inc. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84). The issue in this case was whether chemicals used by the taxpayer in its hide processing operation were partially or totally exempt from sales/use taxes under section 144.030.2(2), RSMo (Supp. 1983) as "materials. . . which when used. . . become a component part or ingredient of the new personal property resulting from such manufacturing, processing, compounding, producing or fabricating. . . ."*

The Administrative Hearing Commission ruled that section 144.030.2(2) did not just apply to manufacturers. The statute applied instead to materials used in manufacturing. It is the goods that are used, not the purchaser of the goods, which defines the extent of the exemption.

Secondly, the commission found that the taxpayer was entitled to claim the exemption even though it actually performed the work in question on a contractual basis. It is not necessary that the taxpayer be manufacturing its own goods, and even if it were, as noted previously, the exemption in question is not limited to manufacturers but to manufacturing, etc. The fact that the taxpayer worked on a contract basis was irrelevant.

The commission also found that the key to whether materials become a component part or ingredient of the new personal property was whether the taxpayer purchased them for its own use and consumption or for resale. Looking to legislative history the court found that section 144.030.2(2) was in fact simply a repetition of the exclusions already inherent in the definitional provisions of section 144.0101.(8) defining "sale at retail."

*While acknowledging that on two previous occasions courts of the state of Missouri have ruled in the taxpayer's favor in cases similar to this one, the commission noted that such rulings were not in accordance with either the well-established rule that exemption statutes must be strictly construed against the taxpayer or the historical purpose of the statute as it was explained in **Southwestern Bell Telephone v. Morris**, 345 SW2d 62 (Mo. banc 1961). The commission noted that courts in other states have consistently ruled that the component part exemption is akin to the sale-for-resale philosophy and that chemicals which are not detectable in the finished product do not constitute component parts. Numerous cases from other jurisdictions were cited. Moreover, the mere presence of traces of a chemical in a final product does not make the chemical a component part. The court cited as an example microscopic particles of water vapor and other gases which are left in mined coal by explosives. These trace chemicals do not make the explosives a component part.*

The court also cited the elimination of double taxation as the rationale for the component part exemption. Therefore, if the presence of a material in a finished product is merely incidental then the material was not purchased for resale and the purchase should be taxable. In the case at hand the court noted that various products that were purchased to form chrome-tan were totally retained in the product. These materials should be exempt because they were purchased with the intent that they would be resold as part of the product.

The commission distinguished cases where part of the material was intended to become a component part. While some states have taken the position that the purchase of a material with the intention that part of it shall remain in the product at the time of resale will exempt all of the material, the commission took the position that only the part which was intended to become a component part should be exempt, noting that section 144.030.2(2) expressly provides that exemptions for various materials only apply to the extent they are incorporated into products which are intended for resale.

***Hardee's of Springfield, Inc., et al. v. Director of Revenue**, Case No. RS-82-2181 (A.H.C. 6/11/85). The issue in this case was the imposition of use tax upon shortening used for deep frying goods at petitioner's restaurants. Petitioner asserted that use tax was not due on any of the shortening because it became an ingredient or component part of new personal property and thus was exempt as provided by section 144.030.3(1), RSMo (1978). The director countered that petitioner had to be a manufacturer to qualify for this exemption and that no exemption was proper unless the ingredient was totally incorporated into the new product.*

*The commission cited **Blueside Company v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84) for the proposition that the exemption also applies to processing. However, again citing **Blueside**, the commission held that the ingredient of component part exemption is only applicable to the extent that the article is incorporated in new property. In addition, those articles whose presence in the final product is not necessary or essential are not exempt. The Administrative Hearing Commission found that 50% of the shortening in question was absorbed and therefore exempt.*

The bulk of the unabsorbed shortening was sold for salvage. Petitioner contended that this salvage sale constituted a retail sale and that its use of shortening was therefore exempt under section 144.615, RSMo (1978) as property held for resale in the regular course of business. However, the commission rejected petitioner's argument by stating, "If the by-product is an inconsequential portion of the taxpayer's business and the by-product is sold as salvage primarily to avoid the cost of refuse collection, the articles in the by-product would not be exempt from use tax because those articles would be held substantially for use and not for resale."

***P.F.D. Supply Corporation v. Director of Revenue**, Case No. RS-80-0055 (A.H.C. 6/6/85). The issue in this case was the imposition of sales tax on certain sales transactions of shortening and nonreusable plastic and paper products which petitioner sells to restaurants for use in the preparation and service of food products. Petitioner asserted that the sales in question were exempt as sales for resale because the purchasing restaurants were not the ultimate consumer of the goods in question. The Administrative Hearing Commission, relying on the exemption set forth in section 144.030.3(1), RSMo for materials purchased for use in "manufacturing, processing, compounding, mining, producing or fabricating" found that the production of food by a restaurant constituted processing.*

*Relying on its previous decision in **Blueside Co. v. Director of Revenue**, Case No. RS-82-4625 (A.H.C. 10/5/84) the commission found that the petitioner's sale of shortening was exempt from taxation to the extent that the purchaser intended for it to be absorbed into the fried foods. The sale of the portion which the purchaser did not expect to be so absorbed was not exempt as an ingredient or component part. However, petitioner asserted that the unabsorbed portion was exempt as a purchase for resale because it was sold by the purchaser for salvage after being used. Again referring to **Blueside**, the commission held that the salvage sale was only incidental to the primary transaction. Therefore, the purchasing restaurant was the* *user and the sale to that restaurant was a taxable retail sale.*

However, the commission also found that the petitioner accepted exemption certificates in good faith for all the shortening held. Acknowledging that the Missouri Supreme Court in ***Overland Steel, Inc. v. Director of Revenue****, 647 SW2d 535 (Mo. banc 1983) held that the good faith acceptance of an exemption certificate does not absolve the seller from liability for sales tax, the Administrative Hearing Commission cited other authority for the proposition that the seller is exempt. The commission resorted to section 32.200, Art. V, section 2, RSMo (1978) of the Multistate Tax Compact which specifically provides such an exemption. The Supreme Court had not addressed this in the* ***Overland Steel*** *case. Not only did respondent have a regulation, 12 CSR 10-3.194, which recognizes the applicability of section 32.200 to Missouri sales and use tax, but it had another regulation, 12 CSR 10-3.536(2) in effect at the time of the audit which specifically relieved the seller of liability when an exemption certificate was accepted in good faith. Based upon this the commission found that the seller's good faith exempted it from liability.*

Finally, the commission held that 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.

Hardee's of Springfield, Inc. et al. v. Director of Revenue*, Case No. RS-82-wr 42181 (A.H.C. 6/11/85). The Administrative Hearing Commission held that the ingredient or component part exemption is only applicable to the extent that the article is incorporated in new property. In addition, those articles whose presence in the final product is not necessary to essential are not exempt. The commission found that 50% of the shortening in question was absorbed and therefore exempt.*

Teepak, Inc. v. Director of Revenue*, Case Nos. RS-86-0123 and RS-86-1430 (A.H.C. 5/13/88). In this case, the taxpayer argued that casings used in the manufacture of hot dogs were exempt from sales tax under the component part exemption. The Administrative Hearing Commission rejected the taxpayer's argument, finding that there was no purposeful incorporation of the casing, or its parts, into the finished hot dog, therefore, the component part exemption did not apply.*

Pea Ridge Iron Ore Co., Inc. v. Director of Revenue*, Case Nos. RS-84-1398, RS-84-1468, RS-84-1469, RS-84-1470, RS-84-1728, RS-84-1729 and RS-86-0517 (A.H.C. 6/30/88). The primary substantive issue was whether the taxpayer's purchases of grinding balls, grinding rods, bentonite and olivine were exempt under the steel products exemption in 144.030.2(2), RSMo which exempts "materials and manufactured goods which are ultimately consumed in the manufacturing process by becoming, in whole or in part, a component part or ingredient of steel products intended to be sold ultimately for final use or consumption." The Administrative Hearing Commission held that the presence of the grinding media and bentonite in the final product, though a secondary purpose and not the primary intended purpose, was sufficient to qualify the materials for the steel products exemption. The materials were purchased with an intent and purpose of becoming an identifiable and detectable ingredient or component part of the iron ore pellets, and therefore were exempt.*

Marshall Scott Enterprises, Inc. v. Director of Revenue*, Case No. RS-87-0786,* ***Kentucky Fried Chicken of Spanish Lake, Inc****., Case No. RS-87-0787 and* ***Al-Tom Investment, Inc. d/b/a Kentucky Fried Chicken****, Case No. RS-87-0788 (A.H.C. 7/8/88). The taxpayers contended that the purchases of shortening were excluded from taxation under 144.010.1(8), RSMo, because the shortening was substantially incorporated in the food products and therefore was for resale as a portion of the food products. The Administrative Hearing Commission rejected this argument and reaffirmed its decision in* ***Blueside Companies, Inc. v. Director of Revenue****, Case No. RS-82-4625 (10/5/84).*

Snap Shot Photo v. Director of Revenue*, Case No. RS-87-1056 (A.H.C. 8/29/88). The Administrative Hearing Commission found that all chemicals used in the photofinishing process as part of a closed vat system, and not washed away during the process, were exempt from taxation because "all such chemicals do become ingredients and component parts of all the products over time."*

St. Joe Minerals Corporation v. Director of Revenue*, Case Nos. RS-85-1812 and RS-85-2289 (A.H.C. 9/13/88). The Administrative Hearing Commission reaffirmed earlier decisions that held that before materials can be exempt as component parts or ingredients they must be shown to have been purchased for the purpose of becoming part of the final product. They must also be shown to have become a part of the product and must be detectable in the final product. They must also serve a purpose in the final product and not be just an impurity. It is not enough that the materials are necessary to the manufacturing process; it must be shown that the materials are purposefully incorporated into that final product.*

12 CSR 10-3.296 Manufacturing Defined
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMO 1978. S.T. regulation 030-25 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

Wendy's of Mid-America, Inc. v. Department of Revenue*, Case No. RS-79-0222 (A.H.C. 7/22/82). Machinery and equipment used in fast food restaurants are not entitled to section 144.0302.(4), RSMo exemption because fast food restaurants clearly do not constitute manufacturing plants. Section 144.615(6), RSMo exemption from use tax is applicable to foil, wax paper and bags used in fast food restaurants because they are held solely to be incorporated into products which are resold in the regular course of taxpayer's business.*

12 CSR 10-3.298 Electrical Appliance Manufacturers
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-26 was last filed Dec. 31, 1975, efffective Jan. 10, 1976. Rescinded: Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.300 Common Carriers

PURPOSE: This rule interprets the sales tax law, section 144.030.2(3), RSMo, as it applies to common carriers.

(1) Purchases of materials, replacement parts and equipment on motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers may qualify for the exemption, provided the purchases are used directly upon and for the repair and maintenance or manufacture of the carriers.

(2) Equipment on motor vehicles used by common carriers which is exempt from sales tax includes power take-off (PTO) units which are attached to the transmission of the power unit of the vehicle and all materials and replacement parts for PTO units.

(3) Materials and replacement parts for motor vehicles which are used by common carriers and which qualify for exemption from sales tax include, but are not necessarily limited to, grease, motor oil, antifreeze, fuel additives, paint for body work and radio repair parts purchased for use on the vehicle.

(4) Determination of whether a vehicle qualifies for exemption as a common carrier should be made in accordance with the provisions of 12 CSR 10-3.304.

(5) Motor vehicles, watercraft, railroad rolling stock or aircraft engaged as a contract carrier or as a private carrier cannot qualify for the exemption.

(6) Trailers and semitrailers, whether engaged as common carriers or otherwise, cannot qualify for the exemption.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-27 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Dec. 10, 1986, effective April 11, 1987.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***Western Trailer Service, Inc. v. LePage,** 575 SW2d 173 (Mo. banc 1978). Where, under contract, employees of trailer company went to Kansas, picked up trailers and brought them into state and, after repairs were made and repair parts installed, trailers were returned under contract to Kansas by trailer company employees, there was dealing between persons of different states in which importation was an essential feature or formed a component part of the transaction, with retail sales made in commerce between the two states, to which an exemption from sales tax for being in interstate commerce applied.*

12 CSR 10-3.302 Airline Defined
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-27A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.304 Common Carrier Exemption Certificates

PURPOSE: This rule provides guidelines as to the use of common carrier exemption certificates and interprets and applies sections 144.030.2(3) and 144.080, RSMo.

(1) When a sale to a common carrier is made, an exemption certificate should be completed. The certificate should contain the Public Service Commission (PSC) number and Interstate Commerce Commission (ICC) number. A determination can be made as to whether the vehicle is used as a common carrier or a contract carrier from the Missouri PSC number. If the vehicle is used as a contract carrier, the PSC number will be followed by a dash "X" (T5000—X). If the common carrier has only an ICC number, a determination should be made by the seller as to whether the purchaser is actually engaged as a common carrier and the number must appear on all supporting documents.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-28 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.306 Aircraft
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-29 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.308 Boat Manufacturing Equipment
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-30 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.310 Truckers
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-31 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.312 Local Delivery and Terminal Equipment
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. s.t. REGULATION 030-32 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.314 Patterns and Dies
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. Previously filed as rule no. 54 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-33 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.316 Replacement Machinery and Equipment

PURPOSE: This rule interprets the sales tax law as it applies to replacement machinery and equipment and interprets and applies section 144.030.2(4), RSMo.

(1) Replacement of machinery and equipment because of a change in design or product is not subject to the sales tax. However, whether the replacement machinery and equipment does the same work, but the replacement of the equipment was not necessitated by a change in the product or design, it is subject to the sales tax. These items of equipment as welding gates, forms molds, patterns and dies may qualify for this exemption.

(2) Example 1: If an automobile plant must replace machinery because the present machinery cannot do the work due to the changes on the new models, the machinery is not subject to the sales tax. If the auto company replaced a machine because of age, obsolescence, availability of a machine with greater capacity or excessive upkeep and maintenance cost or other similar reasons, the seller of that machinery is subject to the sales tax.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***Floyd Charcoal Co. v. Director of Revenue**, 599 SW2d 173 (Mo. banc 1980). To determine if new or replacement equipment is exempt from sales or use tax, an integrated plant approach is used to determine if it is used directly in manufacturing products.*

***St. Joseph Light & Power Co. v. Director of Revenue**, Case No. RS-79-0162 (A.H.C. 1/21/83). Taxpayer utility company purchased a new boiler to replace a boiler that was worn out. The issue is whether the boiler's purchase should be exempt from use tax pursuant to section 144.030.3(3), RSMo which exempts the purchase of machinery and equipment used directly for manufacturing or fabricating when the purchase is caused by reason of a design or product change, or whether it is exempt under section 144.030.3(4), RSMo as machinery or equipment used to expand an existing manufacturing plant. The Administrative Hearing Commission found that because the boiler was purchased to replace a worn-out boiler, it was precluded from finding that the machinery was purchased by reason of a design or product change. Therefore, taxpayer was not entitled to an exemption on this basis. However, the commission found that the new boiler did expand the plant's capacity by five megawatts and allowed the boiler to operate an additional two days per month. Based upon this finding, the commission concluded that the new boiler was equipment purchased and used to expand an existing manufacturing plant in this state.*

***Empire District Electric Co. v. Director of Revenue,** Case No. RS-79-0249 (A.H.C. 3/29/83). In this case the issue was the taxability of a transformer, concrete, oil and antifreeze used in an electric generating facility. The Administrative Hearing Commission was faced with the task of applying the new "integrated plant" theory which the Missouri Supreme Court adopted in **Floyd Charcoal Co. v. Director of Revenue**, 599 SW2d 173 (Mo. banc 1980) and **Noranda Aluminum v. Missouri Department of Revenue**, 599 SW2d 1 (Mo. banc 1980) to determine whether these items were exempt under section 144.030.3(4), RSMo from sales and use tax as "machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating." The commission found that while Missouri has adopted the integrated plant theory, it is apparent from the statute limiting language that not all items used in the manufacture of a product are exempt from sales or use tax.*

With respect to the oil and antifreeze the commission found, first of all, that it did not qualify as a "device" and thus could not be considered equipment and machinery. It also found that the oil and antifreeze, though used in the start up of equipment, was not solely required for installation and construction. It continued to be used in the machinery after start up and, therefore, it was not exempt as supplies used solely for installation or construction of this machinery or equipment.

*With respect to the concrete that was used to construct duct banks protecting the electrical system and manhole covers for access to the electrical system, the court found that the decision in **Noranda Aluminum** was not controlling, because in that case the materials in question were used to construct duct banks which prevented the spillage of molten aluminum. Because the cement in question was not used to protect the electrical system from the manufacturing process itself, it was found not to be an integral part of that manufacturing process. Therefore, the concrete was not exempt from sales or use tax.*

*With respect to the step-up transformer, the court found that it had two functions. It had a nonexempt function controlling the transmission of electricity to customers. The commission relied on New York law to the effect that the generation of voltage is manufacturing, the transmission of voltage is not. However, several times a year the transformer was used to start a generator which manufactures electricity. On those occasions the transformer was used in the manufacturing process. Therefore, the transformer is exempt from sales tax or use tax, because section 144.030.3(4), RSMo does not require that machinery be used exclusively or even primarily for manufacturing to qualify for exemption (see also **State ex rel. Ozark Lead Co. v. Goldberg**, 610 SW2d 954 (1981) and **Noranda Aluminum v. Missouri Department of Revenue**, 599 SW2d 1 (Mo. banc 1980)).*

***American Lithographers, Inc. v. Director of Revenue**, Case No. RS-87-1355 (A.H.C. 10/25/88). The Administrative Hearing Commission found that the purchase of printing plates was exempt from the imposition of sales and use tax under 144.030.2(4), RSMo as "replacement parts replaced by reason of product or design change." The Administrative Hearing Commission compared the printing plates with the dies and molds used by automobile manufacturers and then cited the Department of Revenue's regulation 12 CSR 10-3.316(2) which states in part that "if an automobile plant must replace machinery because the present machinery cannot do the work due to changes on the new models, the machinery is not subject to the sales tax."*

***Tension Envelope Corp. v. Director of Revenue**, Case No. RS-87-0420 (A.H.C. 12/6/88). The Administrative Hearing Commission found that printing plates were exempt under 144.030.2(4), RSMo as "replacement parts replaced by reason of product or design change." In reference to the artwork and the prep work, the Administrative Hearing Commission, citing the case of **Empire District Electric v. Director of Revenue**, Case No. RS-79-0249, stated that one requirement for eligibility under section 144.030 is that the item by a "device" and because the artwork and prep work are not devices their purchase was not exempt under 144.030.2(4).*

12 CSR 10-3.318 Ceramic Greenware Molds

PURPOSE: This rule interprets the sales tax law as it applies to ceramic greenware molds.

(1) All replacement greenware molds of the same design as an original mold whether purchased at the same time as an original mold or later, are subject to the sales tax, unless purchased for resale. When a mold is purchased by a seller for resale it may be purchased under a resale exemption certificate and is not subject to the sales tax.

(2) Example 1: Mr. Brush is a ceramic greenware manufacturer and purchases six (6) initial greenware mug molds which he is going to use to manufacture greenware mugs to be resold. The first mold is not subject to the sales tax, but the other five (5) are subject to the sales tax and the seller must include the receipts from this sale in his taxable gross receipts.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.320 New or Expanded Plant

PURPOSE: This rule interprets the sales tax law as it applies to new or expanded plants.

(1) Purchases of machinery and equipment to establish a new or to expand an existing manufacturing, mining or fabricating plant in Missouri for the manufacturing, mining or fabricating of a product to be sold for final use or consumption are exempt from Missouri sales tax pursuant to section 144.030.2(5), RSMo.

(A) The machinery and equipment must be used directly in manufacturing, mining or fabricating a product intended to be sold ultimately for final use or consumption. Missouri has adopted the integrated plant theory in construing the machinery and equipment exemption. The exemption is not limited to those items of machinery or equipment which produce a direct change in the manufacturing process. The exemption is to be applied broadly to modern manufacturing facilities designed to operate on an integrated basis. To be used directly the machinery and equipment purchased must be essential to and comprise an integral part of the manufacturing process (see *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)).

(B) Only machinery and equipment which are devices qualify for the exemption. Materials used and consumed in the continuing maintenance and functioning of machinery and equipment such as oil and antifreeze do not qualify for the exemption.

(2) Materials and supplies solely required for the installation or construction of the tax exempt machinery or equipment are also exempt from sales tax under the new or expanded plant exemption.

(3) The phrase establish new manufacturing plants in the state was construed in *State ex rel. Dravo Corporation v. Spradling*, 515 SW2d 512 (Mo. banc 1974) to mean, in the common sense and practical interpretation of the term establish, the complete and final construction of a facility and all of its component parts. Construction shall be deemed completed within a reasonable time after production begins; machinery and equipment ordered after that time shall not qualify for the new plant exemption.

(4) The purchase of additional machinery and equipment for the improvement of the plant qualifies for the expanded plant exemption if one (1) of the following criteria is met:

(A) The additional machinery and equipment is purchased as a result of the physical enlargement of the existing manufacturing, fabricating or mining facility; or

(B) The additional machinery and equipment are not purchased as a result of the physical enlargement of the facility, but because of its purchase, the facility increases production volume, increases employment or increases the numbers of types or models of products.

1. The increase may be actual or potential. If potential, the person claiming the exemption has the burden of proving that at the time of purchase of the machinery and equipment the expressed intent and purpose was to accomplish the actual increased production volume, increased employment or increased numbers of types or models of products within a reasonable period of time.

2. Documents that may be provided to establish the requisite intent include, but are not limited to, the following: capital expenditure authorization requests, production records, production plans, purchase invoices, work authorizations, plant equipment cost savings analysis or reports and asset justification reports prepared by internal and contracted engineers. The documents must have been prepared prior to or at the time of purchase of the machinery or equipment.

(5) Replacement of machinery and equipment without increased production volume, employment or numbers of types or models of products does not qualify for the expanded plant exemption. Replacement machinery and equipment may qualify for the exemption for replacement due to design or product change in section 144.030.2(4), RSMo.

(6) Examples qualifying for the new or expanded plant exemption include:

(A) Example 1: Honest Ned's Manufacturing Company builds an addition to its existing building. It purchases new machinery to set up another assembly line to be located in this addition. The machinery may be purchased under the expanded plant exemption;

(B) Example 2: Ray Gunn Fabricating Company purchases additional machinery to establish a second assembly line but it does not expand its existing building. Production volume is increased from five thousand (5000) units per day to seven thousand five hundred (7500) units per day. The machinery may be purchased under the expanded plant exemption;

(C) Example 3: Jay Bird Manufacturing Company purchases additional machinery to establish a second assembly line. It does not increase its existing building nor does it increase its production volume. The additional machinery does result in the hiring of three (3) additional employees. The machinery may be purchased under the expanded plant exemption;

(D) Example 4: Ron's Silver Rock Mining Company purchases machinery to replace existing machinery used in the mining process. The machinery increases the production volume from five thousand (5000) units per day to seven thousand five hundred (7500) units per day. Because the machinery increases the production volume, its purchase is exempt from sales tax and is covered by the expanded plant exemption;

(E) Example 5: Country Ken's Manufacturing Company builds a new manufacturing plant. Production begins on January 1, 1989, although one (1) piece of machinery has not been delivered due to a factory backlog. That piece of machinery would be covered by the new plant exemption because it was ordered prior to the beginning of production; and

(F) Example 6: Cousin Clem's Fabricating Company purchases an accessory piece of equipment and affixes it to existing plant machinery, making it a component part of the existing machine. Production volume is therefore increased from three thousand (3000) units per day to six thousand (6000) units per day. Alternatively, the number of types or models of products is doubled. That accessory piece of machinery may be purchased under the expanded plant exemption.

(7) An example not qualifying for the new or expanded plant exemption follows: Final Draft Fabricating Company builds a new manufacturing plant. Production begins on January 1, 1989. In June, 1989 the manufacturing company decides that additional machinery is needed. That purchase of additional machinery would not qualify for the new plant exemption. It may qualify for the expanded plant exemption if the machinery increases the production volume, increases employment or increases the number of types or models of products that can be manufactured.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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

PURPOSE: This rule interprets the sales tax law as it applies to rock quarries and interprets and applies section 144.030, RSMo.

(1) A rock quarry engaged in removing earth or overburden to expose the rock and in removing rock from the ground has been held to constitute mining for purposes of sales tax exemptions.

(2) A rock quarry engaged in the crushing of rock into smaller and usable sizes has been held to be engaged in manufacturing for purposes of the sales tax exemptions.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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 bull-dozer 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

PURPOSE: This rule interprets the sales tax law and applies it to when machinery is directly used in the manufacturing process and interprets and applies section 144.030, RSMo.

(1) In determining whether a machine is directly used in producing a product, the Missouri courts have adopted the integrated plant rule, so that the phrase directly used does not require the division into theoretically distinct states of what is in fact continuous and indivisible.

(2) The basic questions to be answered in determining questions of direct use are—whether the disputed item is necessary to production; how close, physically and causally, is the disputed item to the finished product; and whether the item operates harmoniously with other machinery to make an integrated and synchronized system.

(3) As long as there is a continuous progression from raw material to finished product and there are not any extended interruptions in the manufacturing process, the integrated and synchronized system begins when raw materials enter the plant site and ends when the finished product leaves the plant site. Example: A-Plus Steel Company manufactures steel products. It purchases train car loads of steel beams that are used in the plant to produce the products. The crane used to unload the steel beams at the plant is part of the integrated and synchronized system and is used directly in the manufacturing process.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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

PURPOSE: This rule sets forth those situations in which machinery will be exempt from *sales tax and interprets and applies section 144.030, RSMo.*

(1) The sales tax exemptions for machinery and equipment used directly in manufacturing a product for sale do not require that machinery be purchased by the owner of the facility or even that the purchaser be the one who uses the machinery in an exempt fashion. All that is required is that the machinery and equipment itself be used in a tax exempt fashion.

(A) Example 1: XYZ Manufacturing Company is building a new plant in Missouri for the production of consumer products and it enters into a contract with Spade Construction. If the contractor purchases, assembles and installs the production machinery and equipment to establish XYZ's plant, the Spade Construction Company may purchase the machinery and equipment tax free. Spade Construction could also purchase, tax exempt, all materials and supplies solely required for the installation or construction of that machinery and equipment.

(B) Example 2: Harvey Store owns a combine and other farm machinery. Pursuant to agreement with several farmers, Harvey goes from farm to farm to provide custom works in the tilling of soil, planting of seed, fertilizing and harvesting of crops and baling of hay. Harvey may purchase his equipment tax exempt.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Aug. 6, 1980, effective Jan. 1, 1981.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***Wendy's of Mid-Missouri, Inc. v. Department of Revenue**, Case No. RS-79-0222 (A.H.C. 7/22/82). Machinery and equipment used in fast food restaurants are not entitled to section 144.030.2(4), RSMo exemption because fast food restaurants do not constitute manufacturing plants.*

***Jackson Excavating v. Administrative Hearing Commission**, 646 SW2d 48 (Mo. banc 1983). Machinery used to purify water for human consumption is exempt from sales or use tax as machinery used to establish a new or to expand an existing manufacturing plant. The court stated the purifications of water is "a transformation of raw material by the use of machinery, labor and skill into a product for sale which has an intrinsic and merchantable value in a form suitable for new uses."*

12 CSR 10-3.328 Contractor Conditions
(Rescinded December 11, 1980)

AUTHORITY: section 144.270, RSMo 1978. S.T. regulation 030-40 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.330 Realty

PURPOSE: This rule interprets the sales tax law as it applies to sales of tangible personal property for incorporation into realty and interprets and applies section 144.010, RSMo.

(1) Sales tax does not apply to the sale of realty or an interest in realty. Nor does it apply to fixtures or improvements to realty where title does not pass until after the property has been attached to and become commingled with and part of the realty.

(2) Example: A cabinet maker is not subject to sales tax for the moneys received under a contract where s/he constructs and installs kitchen cabinets in a home under construction.

(3) Persons selling tangible personal property to construction contractors, general or prime contractors, subcontractors or special contractors for incorporation into realty, are subject to the sales tax on the gross receipts from all these sales.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 18 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 030-41 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***State ex rel. Otis Elevator Co. v. Smith**, 212 SW2d 580 (Mo. banc 1948). Otis Elevator Company was in the business of designing, constructing, installing and repairing elevators in buildings. Respondent claimed there was no sales tax due to petitioner Smith because the materials used to construct new elevators or to modify existing elevators lost their character or status as tangible personal property and became a part of the real property coincidently with their delivery and attachment to the building. Respondent kept a title retention clause in his contract with the building contractor allowing him to retain title to the elevator until he was paid in full and if not, to remove the elevator. Judge Ellison held this clause prevented the tangible personal property from being joined with the realty. Absent this contractual clause, the court would have reached a different conclusion.*

Where the contract for installation of new elevators, and reconstruction or major repairs to existing elevators whereby elevator company retains title to materials until paid, the elevator company is liable for sales tax. Had the contract not contained the title retentions clause the elevator company would not be liable for sales tax.

*Where elevator company does repair work on existing elevators and supplies small parts which become part of the elevator, and does not retain title to the parts, the company is not subject to sales tax. The parts become part of the realty (see **Air Comfort Service, Inc. v. Director of Revenue**, Case No. RS-83-1982 (A.H.C. 4/25/84) and **Marsh v. Spradling**, 537 SW2d 402 (Mo. banc 1976)).*

***Op. Atty. Gen. No. 85, Stapleton (1-15-58)**. Where contractor purchases tangible personal property from subcontractor or materialman, sales tax must be paid.*

***Builders Glass & Products Co. v. Director of Revenue**, Case No. RS-85-0453 (A.H.C. 5/13/87). The assessments at issue dealt with transactions between Builders Glass & Products and various sales tax exempt religious and charitable organizations. The Administrative Hearing Commission found that the petitioner as a contractor should have paid sales tax on its purchases of supplies and materials used in completing its contracts. Therefore, the Department of Revenue did properly impose tax upon the purchase by petitioner of materials used and consumed by it as a contractor and the tax was properly collectable directly from the taxpayer who had purchased the materials under an improper claim of exemption.*

12 CSR 10-3.332 United States Government Suppliers

PURPOSE: This rule provides when products sold to the United States government will be exempt from sales tax and interprets and applies sections 144.010 and 144.030.2(6), RSMo.

(1) Tangible personal property which is used exclusively in the manufacturing, processing, modification or assembling of products sold to the United States government or any of its agencies is tax exempt.

(2) Property which is not used exclusively but only partially and not wholly for manufacturing, processing, modification or assembling of products sold to the United States government or its agencies, is subject to the sales tax. Persons selling property used in the accounting and managerial functions by a person manufacturing, processing, modifying or assembling a product sold to the United States government or to any of its agencies are subject to the sales tax on the gross receipts from all these sales.

(3) Example: A-Plus Manufacturing Company manufactures and assembles aircraft for the United States government, foreign governments and major airlines. A-Plus is not entitled to exemption on its general manufacturing equipment, tools and the like, but only on the tangible personal property used solely and exclusively in manufacturing and assembling the aircraft sold to the United States government.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 030-42 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***State ex rel. Thompson-Stearns-Roger v. Schaffner**, 489 SW2d 207 (1973). The legislature's repeal of old section 144.261 and enactment of new section 144.261 abolished the need for review by the tax commission before judicial review could be sought. Act can only properly be held to have intended to restore the prior system of direct judicial review, without intervening administrative review, of the director's (of revenue) decisions in sales tax matters. Therefore, after the director had rejected claimant's request for refund of sales and use tax, claimant was entitled to direct judicial review by mandamus, without need to seek review of decision by State Tax Commission.*

12 CSR 10-3.333 Cities or Counties May Impose Sales Tax on Domestic Utilities

PURPOSE: This rule interprets the sales tax law as it applies to local government agencies imposing sales tax on domestic utilities and interprets and applies section 144.030, RSMo.

(1) A city or county local sales tax which was in effect prior to January 1, 1980 applies to domestic utilities until rescinded by ordinance.

(2) A city or county local sales tax which was in effect on or after January 1, 1980, by ordinance, may impose a local sales tax upon all sales of metered water service, electricity, electrical current and natural, artificial or propane gas, wood, coal or home heating oil for domestic use. The ordinance must be submitted to the director of revenue by United States registered mail or certified mail.

(3) The tax will be administered and become effective in the same manner as any other city or county sales tax as provided by sections 66.600–66.635, 67.500–67.545 and 94.500–94.570, RSMo (see *Laclede Gas Company v. City of Woodson Terrace*, 622 SW2d 315 (Mo. App. 1981)).

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***Richard A. King v. Laclede Gas Co**., 648 SW2d 113 (Mo. banc 1983). The director of revenue appealed from the decision of the Administrative Hearing Commission which held that the electricity which taxpayer used to operate its storage facility for natural gas and liquid propane was exempt from sales tax on the grounds that it was being used in a noncommercial, nondomestic, nonindustrial manner. The commission relied on the decision in **State ex rel. Kansas City Power and Light Co. v. Smith**, 111 SW2d 513 (1938) to find that the electricity in question was being used in internal operations and was thus noncommercial. The court chose to broaden the definition of commercial as it is used in section 144.020, RSMo to include those activities which are an integral part of the commercial activities of the taxpayer. Thus, the electricity used to operate the storage facilities was taxable because it was an integral part of the taxpayer's commercial utility operation. The court overruled the **Smith** case, but only insofar as it conflicts with the holding in the case at hand.*

12 CSR 10-3.334 Breeding Defined
(Rescinded December 11, 1980)

AUTHORITY: section 144.279, RSMo 1978. S.T. regulation 030-43 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Rescinded: Filed Aug. 13, 1980, effective Dec. 11, 1980.

12 CSR 10-3.336 Animals Purchased for Feeding or Breeding Purposes

PURPOSE: This rule covers the tax treatment of animals for feeding or breeding purposes and interprets and applies sections 144.010, 144.020 and 144.030.2(22), RSMo.

(1) Sales tax does not apply to the sale of animals for breeding or feeding purposes. Unlike the exemptions for feed and feed additives which are limited to livestock or poultry, the exemption mentioned in this rule applies to all animals.

(2) Persons selling animals to purchasers for the purchaser's personal enjoyment or use, without the intent to use or resell these animals or their offspring in the regular course of a business, are subject to the sales tax although the animals would mate with other animals and of necessity would have to be fed. Sales of animals which are for breeding or feeding purposes, which breeding or feeding is carried on as part of a business enterprise, are not subject to the sales tax. Persons selling animals to purchasers for consumption or for the purpose of giving the animals to another or allowing another gratuitously to use, are subject to the sales tax on the gross receipts from all these sales.

(3) Example 1: Jack is a fish farmer. Jack's purchases of the fish would be tax exempt.

(4) Example 2: Bill decides to construct and stock a lake on his farm for the pleasurable fishing of his family, neighbors and friends. Bill's purchases of the fish would be subject to the sales tax.

(5) Example 3: Paul operates a fee fishing lake at which he charges persons a fee to enter the premises. Entrants are allowed to keep all the fish they catch, up to a stated limit. Paul's purchases of fish would be tax exempt.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***Exotic Animal Paradise, Inc., v. Director of Revenue**, Case Nos. RS-83-2797, RS-83-2798 and RS-83-2799 (A.H.C. 2/18/86). The 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

PURPOSE: This rule interprets the sales tax law as it applies to printers and interprets and applies sections 144.010, 144.020 and 144.030, RSMo.

(1) Persons engaged in printing publications, pamphlets, catalogues, leaflets, advertising circulars, stationery and the like, are creating new tangible personal property through these services and are subject to the sales tax on the gross receipts. No deductions are allowed whatsoever for preparing copy, artwork, compositions, phototype or any other services or labor which may be included in the charge.

(2) Materials and supplies such as paper and ink may be purchased tax exempt by printers under the terms of a sale for resale if these materials and supplies become an ingredient or component part of the finished product which will ultimately be sold at retail.

(3) Persons selling supplies and materials such as paper to purchasers who furnish these supplies and materials to printers for use in completing printing jobs for them are subject to the sales tax on the gross receipts from all these sales.

(4) Presses purchased by printers are exempted from sales and use taxes if purchased to establish a new manufacturing plant or to expand an existing manufacturing plant or if purchased for reason of change of design or product and used to produce a product which is to be ultimately sold at retail. Merely the replacement of a printing press, because of obsolescence, the availability of a machine with greater capacity or excessive upkeep and maintenance costs or other similar reasons does not in itself qualify for this exemption.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

K & A Litho Process, Inc. v. Department of Revenue*, 653 SW2d 195 (Mo. banc 1983). The issue in this case was whether the decision of the Administrative Hearing Commission upholding sales tax on lithographic work performed by the appellant was correct. The court, following its recent decision in* ***James v. TRES Computer Systems, Inc.****, 642 SW2d 347 (Mo. banc 1982), found that the lithographic process was the nontaxable sale of a technical professional service and that the transfer of ownership to tangible personal property was only incidental. K & A Litho Process received a color transparency from an outside source such as a printer, advertising agency or publishing house and then created a film separation and a color key that the printer, advertising agency or publishing house could use to print the transparency on paper for distribution. Because the color separation and the color key were merely the means of conveying a nontaxable technical service from K & A Litho to its customers, the gross amount paid to K & A Litho was not taxable.*

12 CSR 10-3.350 Movies, Records and Soundtracks

PURPOSE: This rule interprets the sales tax law as it applies to the rental of movies, records and soundtracks and interprets and applies sections 144.010, 144.020 and 144.030, RSMo.

(1) Rentals of film, records or any type of sound or picture transcription are exempt from tax. Sales of those items are not exempt even if sold to a place of amusement, entertainment or recreation which charges a sales tax for admission.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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

PURPOSE: This rule interprets the sales tax law as it applies to persons selling recording devices.

(1) Persons selling recording machines, cameras, screens or other machinery and equipment to broadcasting stations or theaters are subject to the sales tax on the gross receipts from all these sales.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.354 Pipeline Pumping Equipment

PURPOSE: This rule interprets the sales tax law as it applies to sellers of pipeline pumping equipment.

(1) Sales of machinery and equipment used to propel products by pipelines engaged as common carriers are exempt. The exemption does not apply to contract carriers or to persons propelling their own products. All other machinery and equipment such as the lines, connecting, accessory and communication equipment such as fuel tanks to provide fuel for the engines; manifolds used to connect pumping equipment to the main lines and monitoring equipment are subject to the sales tax.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.356 Railroad Rolling Stock

PURPOSE: This rule interprets the sales tax law as it applies to railroad rolling stock.

(1) Railroad rolling stock is exempt provided that it is used in transporting persons or property in interstate commerce. Railroad rolling stock for use in intrastate commerce is not exempt.

(2) Example 1: A person selling a manufacturer boxcar for the purpose of transporting properties to its warehousing facility outside Missouri, would not be subject to the sales tax on the receipts from these sales.

(3) Example 2: A person selling a switch engine to be used to move railroad cars around the yard, and used solely in the state, is subject to the sales tax on the receipts from the sale.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.358 Electrical Energy

PURPOSE: This rule interprets the sales tax law as it applies to taxable sales of electrical energy.

(1) Sales tax applies to the sale of electrical energy for all commercial or industrial consumption unless the use qualifies for exemption. Exemption would be applicable if the user was consuming electricity in the actual primary manufacturing, processing, compounding, mining or producing of a product or electrical energy used in the actual secondary processing or fabricating of the product, if the total cost of the electrical energy so used exceeds ten percent (10%) of the total cost of production, either primary or secondary, exclusive of the cost of the electrical energy so used.

(2) To qualify for the electrical energy exemption, the applicant must be engaged in manufacturing. Manufacturing is defined as a process that takes something practically unsuitable for any common use and changes it so as to adapt it to such common use. For example, a taxpayer using electricity to blast and crush rock would be engaged in manufacturing (see *Westlake Quarry & Material Co. v. Shaffner*, 451 SW2d 140 (Mo. banc 1970)). On the other hand, a taxpayer using electricity in growing plants would not be engaged in the manufacturing business (for an example of how this exemption applies, see *State ex rel. Union Electric Company v. Goldberg*, 578 SW2d 921 (Mo. banc 1979)).

(3) Cost of production means, cost of materials, labor costs, overhead expenses such as plant equipment depreciation and plant equipment insurance, plant rental and other similar expenses which are in accordance with generally accepted accounting principles and procedures and are normally included when determining cost of production. Electrical energy consumed, which is the basis of the exemption may not be included as part of the cost of production.

(4) All consumers of electrical energy who attempt to qualify for this exemption must request an electrical energy direct pay authorization application form. After this authorization is issued by the director of revenue, the recipient of same shall file, on or before the due date, a return with the director, identifying the amount of electrical energy purchased tax exempt and remit the appropriate tax on energy consumed not covered by this exemption. The director requires an annual calendar report to facilitate the collection of electrical energy direct pay sales tax.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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 nol. 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 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 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.372 Water or Air Pollution Installation Contractor

PURPOSE: This rule interprets the sales tax law as it applies to water or air pollution installation contractors.

(1) If a contractor purchases, assembles and installs tax exempt water or air pollution items, those purchases are not subject to the sales tax.

(2) If a contractor purchases tax exempt materials and supplies solely required for the installation, construction or reconstruction of tax exempt water or air pollution items, those purchases are tax exempt even if a different person or contractor sells, assembles or installs the tax exempt machinery, equipment, appliances or devices.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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

PURPOSE: This rule interprets the sales tax law as it applies to rural water districts.

(1) Persons selling tangible personal property to rural water districts are not subject to the sales tax when the tangible personal property is paid for out of the funds of the rural water district.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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

PURPOSE: This rule interprets the sales tax law as it applies to sales made to and by exempt organizations.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Receipts from sales to organizations which have applied for and which have been granted an exemption by the Department of Revenue may be deducted from the seller's gross receipts if the buyer delivers a copy of the exemption letter issued by the Department of Revenue to the seller and if the sale to the exempt organization in its ordinary functions are paid for out of its funds. Receipts from the sales to an exempt organization which uses the product or service in the conduct of an unrelated trade or business may not be exempted.

(2) Sales to the following organizations are exempt from sales tax provided the organization has met the criteria for exempt status and applied for and received an exemption certificate from the Department of Revenue:

(A) Religious and charitable organizations and institutions in their religious, charitable or educational functions;

(B) Elementary and secondary schools operated at public expense in their educational functions and activities;

(C) Not-for-profit civic, social, service or fraternal organizations solely in their civic or charitable functions and activities;

(D) Eleemosynary and penal institutions and industries of the state;

(E) Any private not-for-profit institution of higher education not otherwise excluded under section 144.030.1(19), RSMo or any institution of higher education;

(F) State relief agency in the exercise of relief functions and activities; and

(G) Any private not-for-profit elementary or secondary schools not otherwise excluded.

(3) Sales by the following organizations are exempt from sales tax provided the organization has met the criteria for exempt status and applied for and received an exemption certificate from the Department of Revenue:

(A) Religious and charitable organizations and institutions in their religious, charitable or educational functions;

(B) Elementary and secondary schools operated at public expense in their educational functions and activities;

(C) Not-for-profit civic, social, service or fraternal organizations solely in their civic or charitable functions and activities; and

(D) All ticket sales made by benevolent, scientific and educational associations which are formed to foster, encourage and promote progress and improvement in the science of agriculture and in the raising and breeding of animals and by nonprofit summer theatre organizations if these organizations are exempt from federal tax under the provisions of the *Internal Revenue Code*.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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

PURPOSE: This rule interprets the sales tax law as it applies to sales of construction materials to exempt organizations and contractors for exempt organizations.

(1) Purchases of construction materials by an exempt organization for use in building a facility to be used by the organization in the conduct of regular activities of the organization are not subject to the sales tax provided a copy of the letter of exemption is furnished to the suppliers of such materials by the organization and the purchases are paid for directly from funds of the organization.

(2) Sales to contractors who purchase construction materials and supplies to fulfill their contracts for exempt organizations are not subject to the sales tax provided the exempt organizations furnish a copy of their current exemption letter and a completed project exemption certificate to the contractor in accordance with sections (3)—(8) of this rule. The exempt organization may monitor all supplies purchased, used and consumed in fulfilling the project.

(3) A project exemption certificate shall include, but may not be limited to, the following:

(A) The exempt entity's name, address, Missouri Tax Identification Number and signature of authorized representative of the exempt entity;

(B) The project location, description and unique identification number;

(C) Date the contract is entered into;

(D) The estimated project completion date; and

(E) The certificate expiration date.

(4) Contractors must provide a copy of the exempt organization's exemption letter and the project exemption certificate to suppliers when purchasing materials and supplies to be consumed in the project.

(5) Contractors are not exempt from sales tax on the purchase of machinery, equipment or tools used in fulfilling these contracts.

(6) Suppliers shall render to the contractor invoices bearing the name of the exempt organization and the project identification number. These invoices must be retained by the purchasing contractor for a period of five (5) years.

(7) Contractors must file a sales tax return for all excess resalable supplies or materials which the contractor purchased for the project but which were not returned to the supplier. This return must be filed and paid not later than the due date of the contractor's sales tax return following the month in which the contractor determines that the materials were not used in the project.

(8) An exempt organization that fails to revise the project exemption certificate expiration date as necessary to complete any work required by the contract will be liable for any sales tax due as determined by an audit of the contractor.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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, tangi-*

ble 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 10-3.390 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 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.TT. 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. regulated 040-11 was lst 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 Jun. 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 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.406 Caterers or Concessionaires

PURPOSE: This rule interprets the sales tax law as it applies to caterers or concessionaires.

(1) Caterers or concessionaires leasing eating establishments on the premises of any tax exempt organization are subject to the sales tax on all sales.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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 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

PURPOSE: This rule interprets the sales tax law as it applies to canteens and gift shops.

(1) Canteens and gift shops operated by not-for-profit hospitals or their auxiliary organizations who make available certain common necessary items for purchase by patients or families visiting the patients and use all of the proceeds for the patients' recreational and rehabilitation purposes are not subject to the sales tax.

(2) If a canteen or gift shop is generally open and accessible to the general public, its gross receipts are subject to the sales tax. If the canteen or gift shop is operated for the benefit of patients, their visitors and employees of the hospital, its gross receipts would not be subject to sales tax; however, a sales tax exemption letter must be applied for and obtained.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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

PURPOSE: This rule interprets the sales tax law as it applies to sales of aircraft.

(1) Sales of aircraft to common carriers for storage or for use in interstate commerce are not subject to the sales tax.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.428 Cigarette and Other Tobacco Products Sales

PURPOSE: This rule interprets the sales tax law as it applies to cigarette and other tobacco product sales and interprets and applies section 144.030, RSMo.

(1) Sales tax does not apply to that portion of the price charged for cigarettes which represents Missouri cigarette tax. ***ITT Canteen Corporation v. Spradling***, 526 SW2d 11 (Mo. 1975).

(2) Sellers of cigarettes should exclude from their gross receipts the amount of Missouri cigarette taxes collected and they are not allowed to charge sales tax to their customers on the Missouri cigarette tax portion of the price charged for cigarettes.

(3) If the local ordinance imposing the city or county cigarette tax imposes the tax on the seller, the tax is considered as being part of the selling price and is subject to sales tax. If the local ordinance imposes the cigarette tax on the purchaser, however, it is not considered part of the selling price and sales tax would not apply to that portion of the price charged for the cigarettes.

(4) Sellers of other tobacco products must include in their gross receipts the amount of Missouri other tobacco products taxes collected. Sellers must charge sales tax to their customers on the entire sales price of the other tobacco products including the Missouri other tobacco products tax portion of the price. Other tobacco products include, but are not limited to, cigarette papers, cigars, smokeless tobacco, smoking tobacco, or other form of tobacco products or products made with tobacco substitute.

(5) Sales tax collected illegally or erroneously overcharged or overcollected and remitted to the state by the seller on the sale of cigarettes and other tobacco products shall not be refunded. This provision shall apply to all tax periods beginning on or after January 1, 1995.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***Hewit 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

PURPOSE: This rule interprets the sales tax law as it applies to handicraft items made and sold by senior citizens, and interprets and applies section 144.030.2(24), RSMo.

(1) Handicraft items made by the seller or his/her spouse are not taxable on the gross receipts from these sales if the seller or his/her spouse is at least sixty-five (65) years of age and if the total gross proceeds from the sales do not constitute a majority of the annual gross income of the seller.

(2) The seller is required to sign a notarized affidavit provided by the Department of Revenue that s/he meets the requirements stated in section (1). Upon receipt of the affidavit, the seller will receive an exemption certificate which is to be posted when making sales.

(3) The seller is required to pay the sales tax at the time of purchase on all supplies which become an ingredient of the finished product.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.432 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

PURPOSE: This rule defines the terms motor vehicle and trailer for purposes of the sales tax law and interprets and applies sections 144.070 and 301.010, RSMo.

(1) For purposes of sales tax, the terms motor vehicle and trailer have the same meaning as those terms under the titling and licensing laws of Missouri.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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

PURPOSE: This rule interprets the sales tax law as it applies to mobile homes and interprets and applies section 144.010 and Chapter 700, RSMo.

(1) The retail sale of a new manufactured home is deemed to be the sale of forty percent (40%) service and sixty percent (60%) tangible personal property. The sixty percent (60%) portion of the purchase price representing the purchase of tangible personal property is subject to Missouri sales tax. Sales of manufactured homes which are permanently affixed to real estate are deemed to be sales of tangible personal property unless and until the owner has complied with the provisions of section 700.111, RSMo. The sale of a used manufactured home upon which Missouri sales tax has already been paid is not subject to Missouri sales tax. The sale of a used manufactured home upon which Missouri sales tax has not been previously paid, is subject to tax on one hundred percent (100%) of the purchase price unless otherwise exempt.

(2) A manufactured home is any factory-built structure equipped with the necessary service connections and made so as to be readily moveable on its own running gear which is designed to be used as a dwelling unit with or without permanent foundation.

(3) Sellers of new manufactured homes are subject to sales tax on sixty percent (60%) of the gross receipts from these sales. The purchaser should obtain a signed receipt confirming that tax has been paid and bring the receipt with him/her when making application for license, title or registration.

(4) A purchaser wishing to title a new manufactured home must produce a signed receipt that the sales tax has been paid on the purchase price of the new manufactured home at the time s/he titles the home. Upon failure of the purchaser to present a signed receipt, the purchaser must remit the sales tax due on the new manufactured home prior to title being issued.

(5) A seller, for purposes of collecting the sales tax on new manufactured homes, is the person selling or transferring the new manufactured home to the purchaser. The power to designate who is to obtain title to the new manufactured home or to physically transfer the property is enough to categorize the person as the seller of the new manufactured home. Agents, brokers and others may be deemed to be sellers of the new manufactured home.

(6) The transfer of the ownership of or title to a manufactured home involving the assumption of the obligation to pay for the home is considered a sale at retail of the manufactured home subject to Missouri sales tax unless Missouri sales tax has been previously paid. As between a dealer and a financial institution, the seller, for purposes of collecting and remitting the sales tax, is deemed to be the person who finds the new buyer to effectuate the new sale.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.438 Tangible Personal Property Mounted on Motor Vehicles

PURPOSE: This rule interprets the sales tax law as it applies to the sale of tangible personal property mounted on motor vehicles *and interprets and applies section 144.030, RSMo.*

(1) The person selling tangible personal property to be mounted on or installed in a motor vehicle or trailer is subject to sales tax unless s/he receives a validly executed resale exemption certificate.

(2) The purchaser of a motor vehicle or trailer is required to pay sales tax to the Department of Revenue at the time of titling and licensing and the purchase price includes the total amount paid to the seller for the vehicle including all tangible personal property mounted on or installed in the vehicle.

(3) Sales of drilling rigs mounted on motor vehicles or trailers are not subject to the sales tax if the drilling rigs are purchased to be used in a mining operation. Exploratory drilling and drilling for oil, water or gas are not included within the definition of mining (see *Rotary Drilling Supply, Inc. v. Director of Revenue*, 662 SW2d 496 (Mo. banc 1983)).

(4) Example 1: Mr. Jones purchases a car at retail from a registered dealer, containing optional equipment extras such as radio, carpets and radial tires. Mr. Jones is subject to sales tax on the full amount paid for the vehicle, including options, and he is required to pay the tax to the Department of Revenue at the time of titling and licensing. The dealer is not subject to the sales tax on this transaction.

(5) Example 2: Mr. Smith runs a television and radio shop and a customer comes in to purchase a citizen's band radio and related equipment to be installed in the vehicle. Mr. Smith is subject to sales tax on the entire gross receipts unless presented with a validly executed exemption certificate, as would be the case, for instance, if the customer was a registered used car dealer who was readying the vehicle for sale.

(6) Example 3: Welle Equipment Company sells, mounts and installs a well-drilling rig on a truck. Welle Equipment Company is subject to sales tax on the entire gross receipts unless the customer executes a resale exemption certificate showing its sales tax license number or its registered motor vehicle dealer's license number.

(7) Example 4: Welle Equipment Company, a registered motor vehicle dealer, owns a truck. Welle Equipment purchases and mounts on the truck a well-drilling rig and sells the motor vehicle well-drilling rig as a unit to Mr. Peters. Welle Equipment should purchase the well-drilling rig under a resale exemption certificate showing its registered dealer's license number and should record the full sales price on the title document and bill of sale delivered to Mr. Peters. Welle Equipment is not subject to sales tax and Mr. Peters is required to pay tax to the Department of Revenue on the full purchase price of the entire unit at the time of making application for title. Welle Equipment is required to collect sales tax if the motor vehicle laws do not require that the unit be titled and licensed.

(8) Example 5: Mr. Peters sells the unit to Mr. Allen in a private sale. Mr. Allen will be subject to the highway use tax at the time of titling on the price paid for the entire unit.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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 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. **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 üümining" 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

PURPOSE: This rule establishes procedures for the proper collection and allocation of state, city and county taxes with respect to divisions of companies operating as motor vehicle leasing companies and interprets and applies section 144.070, RSMo.

(1) Any motor vehicle, which is leased or rented as the result of a contract executed in this state, shall be presumed to be domiciled in this state and domiciled within the city and county where the business office that executed the contract lies.

(2) Each company operating a motor vehicle leasing division within this state, with its application, annually shall provide the director of revenue with a list of all its business locations within this state at which a rental or leasing contract may be executed. The list shall contain the proper mailing address of the business location along with the name of

the city and county where the business is located and the phone number of the locations. The list also shall contain a designation of the mailing address of the principal place of business within this state.

(3) Each company operating within this state shall maintain, at its principal place of business within this state, a current listing of all places of business within the state where a contract for the rental or leasing of a motor vehicle may occur.

(4) Each motor vehicle leasing division within this state shall keep on file, at its principal place of business within this state, a current list of all of its motor vehicles domiciled in this state.

(5) The authority to operate shall be for a period of one (1) year from the date of issuance of the certificate by the director.

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.*

**Original authority: 144.070.7., RSMo 1939, amended 1941, 1943, 1945, 1947, 1951, 1961, 1974, 1975, 1977, 1985 and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.444 Collection of Tax on Vehicles

PURPOSE: This rule interprets the sales tax law as it applies to the collection and payment of sales tax on motor vehicles, over-the-road trailers and mobile homes and interprets and applies sections 144.010 and 144.070, RSMo.

(1) All sales tax on motor vehicles or trailers, with the exception of motor vehicles or trailers leased or rented by a motor vehicle leasing company holding a valid permit, is collected from the purchaser by the Department of Revenue, Motor Vehicle Bureau. Sales of mobile homes, however, are subject to the sales tax at the time of sale. Sellers of mobile homes must submit sales tax collected to the Department of Revenue, Business Tax Bureau.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.446 Motor Vehicle Leasing Companies

PURPOSE: This rule interprets the sales tax law as it applies to the motor vehicle leasing option and interprets and applies section 144.070.5.—144.070.6., RSMo.

(1) A person who exercises the option of paying sales tax as a motor vehicle leasing company is subject to the sales tax on the total gross receipts from all leased or rented motor vehicles and trailers.

(2) Vehicles which are not intended to be leased or rented are subject to the sales tax at the time they are registered with the Motor Vehicle Bureau. Persons exercising the option of acting as a motor vehicle leasing company must state at the time the vehicles are registered, whether or not the motor vehicles will be leased or rented.

(3) Any person engaged in the business of renting or leasing a motor vehicle or trailer who has exercised the option of paying the sales tax as a leasing company must renew its permit to operate as a motor vehicle leasing company on a calendar-year basis.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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

PURPOSE: This rule provides instructions as to the mailing of sales tax returns and interprets and applies sections 144.021 and 144.100, RSMo.

(1) All sales tax returns are to be filed with the Department of Revenue at the address shown on the sales tax return.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.454 No Return, No Excuse—Return Required Even if No Sales Made

PURPOSE: This rule outlines the responsibility of the taxpayer for filing sales/use tax returns and interprets and applies sections 144.080 and 144.100, RSMo.

(1) It is the duty of the taxpayer to obtain any forms required by the Missouri sales/use tax law from the director of revenue and failure to obtain the forms will not be an excuse for failure to file the required returns. If the taxpayer fails to receive a return, s/he immediately should notify the Business Tax Bureau.

(2) Every business with a sales tax license is required to file a return on the monthly, quarterly or annual frequency assigned to it by the Department of Revenue even though no sales were made during the period covered by the return.

(A) Example: Mr. Doe has returns mailed to him on a monthly frequency. Because of personal health problems, the business is closed during the month of March. Upon receipt of the sales tax return for the March period, Mr. Doe must indicate no sales, sign and mail the sales tax return to the Department of Revenue by the appropriate due date.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.456 Calendar Quarter Defined

PURPOSE: This rule defines calendar quarter for purposes of the sales tax law.

(1) For the purpose of the sales tax law, calendar quarter is defined as the period of three (3) consecutive calendar months ending on March 31, June 30, September 30 or December 31.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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

PURPOSE: This rule interprets the sales tax law as it applies to sales tax return filing requirements.

(1) A return must be filed and completed in its entirety.

(2) If state sales tax collections exceed two hundred fifty dollars ($250) in one (1) calendar month, the business is required to report and remit the tax for this month by the twentieth of the following month. Each month stands on its own and the two hundred fifty dollars ($250) is not a cumulative total. In completing the return for a calendar quarter in which a monthly return has been filed, tax should be computed and shown only for the months not filed previously. The months covered by the return and the month previously filed must be clearly stated on the return.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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

PURPOSE: This rule interprets the sales tax law as it applies to the annual filing of sales tax returns.

(1) Any person whose state sales tax liability is less than forty-five dollars ($45) for the quarter may file an annual return for that calendar year on or before January 31 of the succeeding year.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.464 Tax Includes

PURPOSE: This rule interprets the sales tax law as it applies to sales tax deemed to be included in gross receipts.

(1) The sales tax collected by a seller from the purchaser may be deducted from the seller's gross receipts if those amounts are separately stated to the purchaser and added to the purchase price.

(2) Example 1: Mr. Wool is in the business of selling boxes of hard candy. Boxes are sold for various prices to which the sales taxes are added. Mr. Wool collects the price and tax from each customer. At the end of January, Mr. Wool has recorded total receipts of ten thousand three hundred dollars ($10,300) (composed of the ten thousand dollar ($10,000) sales price and the three hundred dollar ($300) state sales tax). In preparing his sales tax return for the month of January, Mr. Wool should report his taxable gross receipts of ten thousand dollars ($10,000) and compute the tax.

(3) Example 2: Mr. Chrunch is in the business of selling boxes of peanuts. Boxes are sold for various prices to which no state sales tax is added and separately stated. Mr. Chrunch collects the amounts from each customer and records the total amount as a sale on his books. At the end of January, Mr. Chrunch has recorded total sales of twenty thousand dollars ($20,000). In preparing his sales tax return for the month of January, Mr. Chrunch should report gross receipts of twenty thousand dollars ($20,000) and compute the tax. Mr. Chrunch may not reduce his gross receipts (by claiming a deduction or otherwise) for state sales tax deemed to be included since the tax has not been added to and separately stated from the sales price of the peanuts.

(4) Example 3: Mr. Glass operates a tavern. Bottles of beer are sold for seventy five cents (75˘) each and mixed drinks are one dollar and twenty-five cents ($1.25) each and no mention of sales tax is made to customers. Mr. Glass records the total amount received thirty thousand dollars ($30,000) as a sale on his books. At the end of January, Mr. Glass should report gross receipts of thirty thousand dollars ($30,000) and compute the tax. Mr. Glass may not reduce his gross receipts (by claiming a deduction or otherwise) for state sales tax deemed to be included since the tax has not been added to and separately stated from the sales price of the drinks.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.466 Revocation Orders

PURPOSE: This rule interprets the sales tax law as it applies to revocation orders.

(1) A taxpayer has ten (10) days from the date of a Default Notice to pay the delinquent taxes for the period that is in default. Failure to pay that delinquency will result in the issuance of a Revocation Order. When a Revocation Order is issued, the Missouri Retail Sales Tax License is deemed null and void at that point in time. Before the license can be reissued or reinstated the taxpayer must complete a new Missouri Tax Registration Application, post a sales/use tax bond (cash bond, surety bond or irrevocable letter of credit), file all returns due and pay all delinquencies on the entire account in full. This action does not preclude the Department of Revenue from pursuing collection of any additional taxes found due at a later date.

(A) Example: A business receives a Default Notice in the amount of four hundred fifty dollars ($450) including penalty and interest for the filing period of September, 1985. The business fails to pay this amount within ten (10) days from the date of the Default Notice. Therefore, a Revocation Order is issued. The business owes additional taxes for the filing periods October, November and December 1985 in the amount of ten thousand dollars ($10,000). The business also failed to file returns for the period of January, February and March of 1986. Before the license can be issued or reinstated the taxpayer must pay the ten thousand dollars ($10,000) for the October, November and December 1985 file periods, the four hundred fifty dollars ($450) for the September 1985 file period and file and pay the returns for the January, February and March 1986 filing periods and pay applicable penalties and interest for all delinquent periods. The taxpayer must also complete a Missouri Tax Registration Application and post the required sales/use tax bond.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.468 Retail Sales Tax License Necessary

PURPOSE: This rule interprets the sales tax law as it applies to obtaining a retail sales tax license.

(1) Persons going into business where goods are sold at retail must have in their possession a retail sales license before beginning business. The retail sales license is necessary to obtain any city or county occupation license or any state license which is required for conducting business.

(2) If a business' sales/use tax license is revoked by the Missouri Department of Revenue and that business continues to make retail sales, it will be assessed up to a five hundred dollar ($500) penalty for the first day of operation after the revocation and one hundred dollars ($100) a day after that, not to exceed ten thousand dollars ($10,000). Day of operation is any day in which a retail sale is made.

(A) Example 1: Business XYZ's sales tax license is revoked by the Department of Revenue for failure to pay sales tax due. The license is revoked at 12:00 p.m. on March 23. Business XYZ continues to operate the rest of the day. Business XYZ will be assessed up to a five hundred dollar ($500) penalty for doing business after its sales tax license was revoked.

(B) Example 2: Business XYZ's sales tax license is revoked for failure to pay sales tax delinquencies. Business XYZ continues to operate for the next ten (10) days, however, two (2) of these days are Sundays and business XYZ is not open on Sunday. Business XYZ will be assessed up to a five hundred dollar ($500) penalty for the first day plus one hundred dollars ($100) a day for each additional day it was open for a total of one thousand two hundred dollars ($1200).

(C) Example 3: Business XYZ's sales tax license is revoked for failure to pay sales tax due. Business XYZ continues to operate for a period of six (6) months after that. Business XYZ will be assessed a penalty of ten thousand dollars ($10,000).

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.470 Consumer Cooperatives

PURPOSE: This rule interprets the sales tax law as it applies to consumer cooperatives.

(1) Consumer cooperatives which purchase goods in quantity and maintain an inventory are required to obtain a retail license to collect and remit the sales tax from the members. They may purchase the goods tax exempt by issuing an exemption certificate to their suppliers.

(2) Consumer cooperatives which take orders from the members prior to purchasing the goods in bulk to obtain a discount and do not maintain an inventory are required to pay the tax at the time of purchase.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.471 Type of Bond

PURPOSE: This rule specifies the type of bond which may be posted to meet the bonding requirements of the sales tax law.

(1) Required bonds may be in the form of a sales/use tax surety bond, cash bond or personal bond supported by an irrevocable letter of credit from a banking institution.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.472 General Bond Examples

PURPOSE: This rule provides general examples illustrating the sales tax bonding requirements.

(1) The following are general examples illustrating the sales tax bonding requirements:

(A) Example 1: Ms. Fresh who has never been in business in Missouri decides to open a restaurant. Ms. Fresh obtains and files an application for a Missouri sales tax license. Ms. Fresh must submit a bond with the application before she can obtain her Missouri retail sales license. If she elects to submit a cash bond, it must be in the form of a cashier's check or money order;

(B) Example 2: Mr. Mill previously operated a bakery and was licensed to do business in Missouri. A short time after selling the bakery, Mr. Mill decides to open another bakery. Mr. Mill must post a sales tax bond even though he held a sales tax identification (ID) number before;

(C) Example 3: Ms. Top owns a heavy equipment dealership under a sales tax license issued in 1973 when no sales tax bonds were required and she has operated her dealership since that date with no tax compliance problems. Due to the booming sales of heavy equipment she decides to open another dealership in a different location in addition to her current operation. She also wants a separate sales tax ID number for this business instead of changing to a multiple location number. A sales tax bond is required. If Ms. Top has a multiple location number and she decides to open up another dealership, a sales tax bond would also not be required. If she has a single location number and switched to a multiple location number when she opened her new dealership, a sales tax bond would not be required;

(D) Example 4: Mr. Parker owns several drive-in restaurants under a sales tax license and bond with a multiple location number. He has been in business for less than five (5) years. If he adds another location to be operated under the same multiple location number, his sales tax bond would have to be increased to reflect the new business;

(E) Example 5: Mr. Parker owns a restaurant under a sales tax license and bond and he has operated under the bond for five (5) years with no sales tax compliance problems. Mr. Parker may make application to the director of revenue for return of his bond;

(F) Example 6: Mr. Parker has owned and operated a restaurant for several years under a sales tax license and bond. Less than five (5) years ago he had been delinquent in remitting his sales taxes to the Department of Revenue in a timely fashion. Mr. Parker may not have his bond returned until after he has had five (5) successive years of tax compliance immediately prior to application for bond return;

(G) Example 7: Robert, Alice and Carol own a furniture store in a partnership which they have operated for three (3) years. Alice decides to leave the partnership. A sales tax bond is not required, as the partnership is not a new applicant;

(H) Example 8: Joe and Marty have operated a restaurant for several years as a partnership. They decide to incorporate. Since the corporation is a new and different taxpayer than the partnership, a sales tax bond is required;

(I) Example 9: Mr. Price is the sole owner of a grocery store. Mr. Price dies and Mrs. Price acquires the business and continues to operate it. A sales tax bond is required since Mrs. Price is a new and different taxpayer. If Mr. and Mrs. Price had operated the store as a partnership, see Example 7., subsection (1)(G);

(J) Example 10: Ms. LaFever receives a notice revoking the Missouri retail sales license for her lounge because her sales tax account is delinquent and she has ignored previous notices to pay. She subsequently pays her liability. She must reapply for a sales tax license and post a sales tax bond;

(K) Example 11: The Buford Beagle Club decides to have a barbecue and plans to sell tickets to help raise money for a new clubhouse. The club must register with the Department of Revenue and obtain a temporary sales tax license for their event. They must also submit a sales tax bond equal to three (3) times the estimated amount of sales tax due on their receipts rounded to the highest ten dollars ($10);

(L) Example 12: Mr. Corn is planning an art exhibit. Artists will pay Mr. Corn a fee for their space and will show and sell their art works. Mr. Corn must register and obtain a temporary sales tax license. He must also submit a sales tax bond equal to three (3) times the estimated sales tax due, rounded to the highest ten dollars ($10); and

(M) Example 13: Mr. Jim Bean wishes to change the name of his business from Bean's Bar to Jim's Lounge. If the business will remain the same except for the name change, Mr. Bean should notify the Department of Revenue of the name change but he will not be required to submit a sales tax bond. If Mr. Bean should decide to change the location of his business but the business would stay the same, he will not be required to submit a new sales tax bond. He must, however, report the location change to the Business Tax Bureau because a new sales tax license may be necessary.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.474 Computing a Bond

PURPOSE: This rule provides examples of how to compute a sales tax bond.

(1) The amount of the bond shall be determined by the director. The bond shall not be more than three (3) times the average monthly tax liability of the taxpayer, estimated in the case of a new applicant, otherwise based on the previous twelve (12) months' experience.

(2) If the business is seasonal, the bond shall be equal to three (3) times the average monthly tax liability based on the months the business was open during the previous twelve (12)-month period. In the case of a new applicant, the average monthly tax liability should be estimated.

(3) The following are examples of how to compute a sales tax bond: Example 1: Mr. Quick is opening a restaurant and is required to submit a sales tax bond with his application. Mr. Quick recently sold a similar restaurant which he had operated for ten (10) years. Since Mr. Quick has a good idea of what his sales tax liability will be from his previous business he should submit a bond equal to three (3) times his monthly liability of the previous business rounded to the highest ten dollars ($10). An example of how Mr. Quick would compute his bond is as follows:

January	$ 150.25
February	$ 160.75
March	$ 176.50
April	$ 185.75
May	$ 203.25
June	$ 226.50
July	$ 221.25
August	$ 210.25
September	$ 206.00
October	$ 185.75
November	$ 160.50
December	$ 211.25
Total	$2298.00

Mr. Quick's total yearly liability for his previous business was two thousand two hundred ninety-eight dollars ($2298). To find his average monthly liability, he must divide this amount by twelve (12) or $\$2298 \div 12 = \$191.50$. His average monthly liability, therefore, was $191.50. To compute the amount of his bond, he must multiply this figure by three (3) or $\$191.50 \times 3 = \$574.50$. This amount ($574.50) should be rounded to the highest ten dollars ($10). The result is the amount of the bond he must submit, five hundred eighty dollars ($580).

(4) Example 2: Ms. Cherry is opening an ice cream parlor and is required to submit a sales tax bond with her application. As she has never been in business before, she has no idea of what her average monthly sales tax liability will be. Ms. Cherry should seek advice from experienced business people in the area or other sources. When she has arrived at an estimated monthly sales tax liability, she should submit a bond equal to three (3) times the amount rounded to the highest ten dollars ($10). She should also keep for future reference, all data used in estimating her liability as she may be asked to substantiate her estimate. If Ms. Cherry has determined her estimated monthly liability to be two hundred twenty-five dollars and fifty cents ($225.50), she must submit a sales tax bond in the amount of six hundred eighty dollars ($680) or $\$225.50 \times 3 = \$676.50$ rounded to the highest ten dollars ($10) which is six hundred eighty dollars ($680).

(5) Example 3: Mr. Boltz opened a hardware store January 1, 1975. Since he estimated his monthly sales tax liability to be one hundred fifty dollars ($150), he submitted a sales tax bond in the amount of four hundred fifty dol-

lars ($450). A review of Mr. Boltz's returns shows a sales tax liability substantantially higher than his estimated liability. The Sales Tax Bureau may request that Mr. Boltz file another sales tax bond to cover his additional liability. The bureau may also request that a larger bond be filed before a license is issued if a review of the application indicates that the bond submitted is inadequate.

(6) Example 4: Mr. Right operates a hot dog stand. The stand is only in operation from May through October every year. Mr. Right sold the stand to Mr. Reed. Reed's sales tax bond will be based on the monthly average of the sales tax reported from May through October. Mr. Right's sales tax liability was one hundred dollars ($100) each month. Therefore, Mr. Reed's sales tax bond would be three hundred dollars ($300).

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.476 Replacing or Applying for Return of Bond

PURPOSE: This rule interprets the sales tax law as it applies to replacing or applying for the return of a bond.

(1) If a bond is replaced by any other acceptable type of bond, the bond being replaced will be returned to the taxpayer. A bond may also be returned to a taxpayer after a period of two (2) years provided no tax, penalties or interest is due and all sales and use tax returns have been timely filed and paid in the last two (2) years. The taxpayer should file an application on forms provided by the Department of Revenue to obtain return of the bond.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.478 Bond Descriptions

PURPOSE: This rule describes the three bond types which are acceptable to meet the bond requirement of the sales tax law.

(1) Surety bond must be issued by an insurance company licensed for bonding in the state on behalf of the applicant on the form provided by the Missouri Department of Revenue. The form must bear the seal of the insurance company, the effective date and be accompanied by a Power of Attorney letter if signed by the attorney in fact and it must also contain the signature of the applicant.

(2) Cash bonds must be paid to the Department of Revenue in the form of a cashier's check, money order or certified check and be accompanied by a cash bond form provided by the Missouri Department of Revenue.

(3) Personal bond must be completed on a form provided by the Missouri Department of Revenue, be approved by the circuit clerk and accompanied by an irrevocable letter of credit issued by a banking institution.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.479 Replacement of Bonds Issued by Suspended Surety Companies

PURPOSE: This rule allows the Department of Revenue to reject surety bonds issued by an insurance company suspended by the Missouri Department of Insurance. It also allows the Department of Revenue to require that a new bond be posted if the taxpayer has a surety bond issued by a suspended surety company.

(1) The Department of Revenue may reject a sales/use tax surety bond issued by an insurance company which has been suspended by the Missouri Department of Insurance.

(2) The Department of Revenue may require a taxpayer who has a sales/use tax surety bond issued by an insurance company suspended by the Missouri Department of Insurance to replace that bond with a new bond—the new bond being in the form of a cash bond, a surety bond issued by a company in good standing with the Missouri Department of Insurance or an irrevocable letter of credit. The replacement bond must be posted by the taxpayer within thirty (30) days of notification by the Department of Revenue.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Nov. 3, 1986, effective Feb. 12, 1987.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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 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

PURPOSE: This rule provides that the Department of Revenue must comply with the confidentiality provisions in section 32.057, RSMo.

(1) Information submitted by a taxpayer to the Department of Revenue or obtained by the Department of Revenue from the taxing officials of other jurisdictions is confidential under section 32.057, RSMo.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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

PURPOSE: This rule interprets the sales tax law as it applies to the misuse of sales tax data by cities.

(1) Any city which obtains confidential sales tax data from the Department of Revenue as a result of its audit of its city sales tax revenues and who uses the information contrary to the confidentiality laws of Missouri may have its future access to this data terminated.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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

PURPOSE: This rule interprets the sales tax law as it applies to an allowance for defective merchandise.

(1) Where an allowance is made for defective merchandise, the seller is subject to the sales tax upon the amount due after subtracting the allowance from the sales price. When the tax has been paid on the full selling price by the seller, a credit or refund of the tax attributable to the allowance must be requested on an application for refund/credit.

(2) If a purchaser returns defective merchandise to the seller and in connection with those returns new merchandise is furnished, the seller is subject to the sales tax only on the difference between the cost of the new article less the allowance for merchandise returned.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.496 Seller Timely Payment Discount

PURPOSE: This rule illustrates when a seller is entitled to the timely payment discount.

(1) From every remittance of tax made on or before the due date as required, the seller is entitled to deduct and retain an amount equal to two percent (2%) for timely payment. Note: A purchaser is not entitled to this deduction.

(2) If the time for payment of the tax has been extended upon proper application to the Department of Revenue, the timely payment discount is allowed if the payment is made within the extension period granted.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.498 Seller Retains Collection From Purchaser

PURPOSE: This rule provides when a seller may retain the difference between the amount of tax actually owed and the amount of tax collected by him/her under the bracket system.

(1) The amount of tax reimbursement collection made by a seller from a purchaser under the bracket system may be retained by the seller regardless of whether those collections are less than, equal to or greater than the seller's tax liability on the return.

(2) Amounts collected by the seller from the purchaser under the bracket system are not includable in the seller's gross receipts to the extent that the collections are authorized under the bracket system and are separately stated or charged to the purchaser.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.500 Successor Liability

PURPOSE: This rule interprets the sales tax law as it applies to a person purchasing a business.

(1) Every person purchasing a business or stock of goods immediately shall notify the director of revenue of the business name, owner's name, date of purchase and type of business or stock of goods.

(2) All successors/purchasers shall withhold a sufficient amount of the purchase money to cover taxes, interest or penalties due and unpaid by all former owners or predecessors, whether immediate or not, until the former owners or predecessors produce a receipt from the director of revenue showing that they have been paid or a certificate stating that no taxes are due; otherwise, the successor/purchaser shall become personally liable for the unpaid tax, penalty and interest accrued.

(3) Successor/purchaser refers to any "person" as defined in section 144.010(5), RSMo who, directly or indirectly, purchases or succeeds to the business or portions of the business or the whole or any part of the stock of goods, wares, merchandise or fixtures or any interest of a taxpayer quitting, selling out, exchanging or otherwise disposing of his/her business.

(4) The purchase money required to be withheld is not limited to actual cash transferring directly to the seller but refers to any purchase consideration flowing directly or indirectly through intermediate parties or otherwise to a seller or predecessor.

(5) To withhold does not necessarily mean having physical assets in hand but means

dealing with the purchase consideration in a manner as to deny a seller the benefit of the purchase consideration and to make it available to the state for the satisfaction of the tax liability.

(6) Assignments for the benefit of creditors, foreclosures of mortgages, sales by a trustee in bankruptcy, repossessions by landlords after defaults on leases and probate estate liquidation sales give rise to successor liability only when the previous owner receives purchase money from the transfer or sale. Any purchaser subsequent to one (1) of the previously listed exempt transfers would be subject to successor liability if purchase money from this subsequent purchase flows through to the original tax debtor.

(7) Example: A former owner of a motel leaves an accrued sales/use tax liability of eighteen thousand dollars ($18,000) on the business. Upon default of loan payments, the financial institution attempted to foreclose upon the business but settled out of court. A taxpayer subsequently purchases the same motel from the financial institution and the former owner without receiving from the financial institution a receipt from the director of revenue showing that the amount of taxes, interest to date and penalties have been paid or a certificate stating that no taxes were due. The taxpayer is personally liable as successor for the unpaid tax, penalty and interest to date on the motel (see *James R. Bates d/b/a The Manor Inn v. Director of Revenue*, A.H.C. Case No. RS-81-0298 (March, 1984)).

(8) All purchasers have a duty to discover whether taxes are due and unpaid by any former owners or predecessors, whether immediate or not and ignorance will not relieve a purchaser from successor tax liability. Reliance on an affidavit pursuant to Missouri's Bulk Transfer Act stating that there were no creditors of the business will not relieve a purchaser from successor tax liability.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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

PURPOSE: This rule interprets the sales tax law as it applies to extensions granted for payment of the tax.

(1) The time for filing a return or for payment of the tax, or both, may be extended upon proper application to the department prior to the due date.

(2) An approved extension of time for filing a return does not extend the time for payment of the tax.

(3) An approved extension of time for payment of the tax does not extend the time for filing the return.

(4) An approved extension of time for paying the tax will stop the interest charges during the extension period.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.506 Determination of Timeliness

PURPOSE: This rule interprets the sales tax law as it applies to the determination of timeliness.

(1) It is the taxpayer's responsibility to see that a return, payment or other document required to be filed with or made to the Department of Revenue is received by the department.

(2) If any return, payment or document required to be filed within a prescribed period or on or before a prescribed date, after that period or date, is delivered by United States mail to the director of revenue or the officer or person with which or with whom that document is required to be filed or payment made, then the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date determined with regard to any extension granted and only if that document

was deposited in the mail postage prepaid, properly addressed to the office, officer or person with which or with whom the document is required to be filed. If any document is sent by United States registered mail, the registration shall be *prima facie* evidence that the document was delivered to the person to which or to whom it is addressed. If any date including any extension of time for performing any act falls on a Saturday, Sunday or legal holiday in this state, the performance of that act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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

PURPOSE: This rule interprets the sales tax law as it applies to the acceptance of exemption certificates during and after an audit.

(1) After completion of an audit, the director, in appropriate cases, may permit deductions where exemption certificates were acquired after the audit commenced.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.516 Application for Refund/ Credit—Amended Returns

PURPOSE: This rule interprets the sales tax law as it applies to the procedure for recovering an overpayment of tax.

(1) Where an overpayment occurs by reason of anything other than a clerical error or mistake on the part of the director of revenue, a taxpayer must file a written claim for credit or refund. For any overpayment occurring after December 31, 1979, on account of a sale made after December 31, 1979, the claim must be filed within three (3) years after the date of overpayment to the Department of Revenue. No claim will be considered unless filed within that time.

(2) Every claim for credit or refund must be in writing, under oath and must state the specific grounds upon which the claim is founded. Amended returns are required to be filed for all periods involved in the overpayment.

(3) Any refund or credit which is erroneously made by the Department of Revenue or which is erroneously taken by the taxpayer may be recovered by the director of revenue against the person.

(4) In cases where a claim for credit is approved, the director of revenue will issue a credit memorandum in the amount of the overpayment. The credit may then be applied by the person in satisfaction of subsequent tax liability. A copy of the approved credit must be attached to the return to which it is being applied. Note: In no case should the taxpayer take credit for any overpayment unless prior approval has been obtained from the director of revenue. Where there is no subsequent tax liability, as where a person has paid a tax and it is later discovered that there was no liability and the person is no longer in business, that person should so notify the director and return the credit memorandum for refund. The refund, if allowed, will be paid out of the appropriation made by the general assembly for that purpose.

(5) No refunds shall be granted for illegally or erroneously overcharged or overcollected sales tax incident to credit card discounts,

cigarettes and/or beer, liquor and wine subject to charges contained in sections 311.520, 311.550 and 311.554, RSMo. This provision shall apply to all tax periods beginning on or after January 1, 1995.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***International Business Machines, Inc. V. Department of Revenue**, 765 SW2d 611 (Mo banc. 1989).*

12 CSR 10-3.518 Claim Form

PURPOSE: This rule provides instructions for obtaining the proper claim for refund/credit form.

(1) The claim for refund or credit forms may be requested by writing to the Business Tax Bureau, P.O. Box 840, Jefferson City, MO 65105.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.520 Who Should Request Refund

PURPOSE: This rule is a guideline for determining who should request the refund of an overpayment of tax.

(1) The seller whose sales tax account has been credited the sales tax is the person who is to request a refund or credit. No other person may make a refund request to the Department of Revenue. Persons who make erroneous payment to a seller should seek their monies back directly from the seller.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.522 Purchaser's Promise to Accrue and Pay

PURPOSE: This rule clarifies that the seller is not relieved of his/her liability for the sales tax even if the seller accepted an exemption certificate from the purchaser.

(1) Sellers may not relieve themselves of responsibility for the tax by merely accepting a letter or statement from their purchaser that they will accrue and pay this tax.

(2) The acceptance of an exemption certificate will not necessarily relieve the seller of his/her liability for the sales tax in the event that the sale of tangible personal property, services, substances or things was a sale at retail subject to the sales tax, unless the seller acted in good faith reliance upon the exemption certificate and did not know or have reason to know, that the certificate or actual use of the goods purchased was not for the claimed exemption (see *Farm and Home Savings Association v. Spradling*, 538 SW2d (Mo. banc 1976) and 12 CSR 10-3.536).

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.524 Bad Debts

PURPOSE: This rule interprets the sales tax law as it applies to bad debts.

(1) If a seller reports and pays the sales tax on an accrual or gross sales method rather than on the basis of gross receipts, s/he is bound nevertheless by the two (2)-year period of limitation for the credit or refund. The two (2)-year period begins with the date the seller pays taxes to the Department of Revenue on account of the sale in question.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.526 Refund Rather Than Credit

PURPOSE: This rule interprets the sales tax law as it applies to refunds.

(1) A refund is made rather than a credit only where the approved credit cannot be taken as a credit on the next return filed with the director of revenue by the seller.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.528 No Interest on Refund/Credit

PURPOSE: This rule interprets the sales tax law as it applies to interest on a refund/credit.

(1) Any approved credit or refund of the sales tax shall be made without interest.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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

PURPOSE: This rule provides when taxes unconstitutionally imposed may be recovered.

(1) Taxes which are claimed to have been unconstitutionally imposed or collected are subject to the same requirements as other claims for refund or credit.

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.

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.532 Resale Exemption Certificates

PURPOSE: This rule interprets the sales tax law as it applies to utilization of exemption certificates and sets forth the requirement that exemption certificates be updated every five years.

(1) All sellers are required to keep exemption certificates signed by the purchaser or his/her agent for all exempt sales of tangible personal property or taxable services claimed.

(2) Once a seller has in his/her possession an exemption certificate from a purchaser, additional exemption certificates for individual purchases are not required as long as there is no change in the character of the purchaser's operation and the purchases are of tangible personal property or taxable services claimed under the original exemption certificate. The exemption certificates retained by the seller must be updated every five (5) years.

(3) All sales which are not supported by properly executed exemption certificates shall be deemed retail sales and the seller held liable for the sales tax.

(4) Resale exemption certificates may not be used to obtain tangible personal property or taxable services to be used or consumed by the purchaser, even if the purchaser decides that it would be more convenient to handle his/her purchases in this fashion.

(5) The Department of Revenue will provide a reasonable number of exemption certificates upon request.

(6) Purchase of alcoholic beverages from a wholesale distributor located in Missouri will be considered to have been purchased for resale if the purchaser supplies the wholesale distributor with a retail liquor license number. The possession of a retail liquor license number by a distributor will be treated as if it was a resale exemption certificate.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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 acknowledgement that a purchase is being made under an exemption certificate or letter if the certificate is not presented anew for each transaction; auctioneers acting for undisclosed principals are subject to sales tax as the seller of tangible personal property; and that auctioneers acting for disclosed principals must maintain satisfactory evidence of that fact.*

12 CSR 10-3.534 Delivery of the Sale for Resale Exemption Certificate

PURPOSE: This rule interprets the sales tax law as it applies to the delivery of resale exemption certificates.

(1) In order for a seller to qualify for any deduction, s/he must in good faith accept an exemption certificate of a type approved by the Department of Revenue, delivered by a purchaser who resells tangible personal property in the ordinary course of business.

(2) If a seller sells tangible personal property or taxable services free of the sales tax on resale exemption certificate which s/he does not accept in good faith, the seller remains liable for tax.

(3) Example 1: X, a retail grocer, buys one hundred fifty dollars ($150) worth of brooms from Y. X, however, will not give Y a sale for resale exemption certificate. If X later presents the certificate, Y can deduct the proceeds of the sale from his/her gross receipts in the month that the certificate is delivered.

(4) Example 2: A, a retail seller of television sets, sells a set to his/her friend B, the operator of a tavern. A remains liable for the sales tax even if s/he accepts a resale exemption certificate from B unless s/he establishes clearly that s/he was acting in good faith.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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

PURPOSE: This rule interprets the sales tax law as it applies to the seller's responsibility for collection and remittance of sales tax when an exempt sale is subsequently determined to have been a sale at retail subject to tax.

(1) When a seller reasonably accepts in good faith any exemption certificate that a person is purchasing the item under the exemption claimed, the certificate shall be evidence that the proceeds from the transaction are deductible from the seller's gross receipts. The burden of proving that a sale of tangible personal property, services, substances or things was not a sale at retail subject to the sales tax shall be upon the seller who made the sale.

(2) The furnishing of an exemption certificate to a seller by a buyer constitutes a claim by the buyer that the sale is exempt from sales tax. If the claim is found to be improper, the seller remains liable for the tax but the Department of Revenue may proceed against the buyer. If the department collects the tax from the buyer, then the seller is entitled to a credit against the amount due from the seller on that purchase (see *Farm and Home Savings Association v. Spradling*, 538 SW2d 313 (Mo. banc 1976) and also 12 CSR 10-3.532).

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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 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.

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

PURPOSE: This rule interprets the sales tax law as it applies to possession and delivery of exemption certificates.

(1) All sellers must be in possession of, and have available for inspection, all exemption certificates for the period of an audit at the commencement of the audit.

(2) After completion of the audit, the Department of Revenue, in appropriate cases, may permit deductions where certificates were acquired after the audit commenced.

(3) The seller need be in possession of only one (1) exemption certificate of the type required from each buyer in order to claim the particular deduction sought.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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 Jun. 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

PURPOSE: This rule defines a billing for purposes of the sales tax law.

(1) A billing of any tax, penalties or interest is a notice that, if not paid, an assessment will be made against the taxpayer. The billing is not itself an assessment and the billing is sent by regular mail. Assessments, when mailed, are sent by certified or registered mail.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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 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 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.556 Interest and Discounts are Additional

PURPOSE: This rule interprets the sales tax law as it applies to the inclusion of interest and discounts in the computation of an assessment.

(1) In computing the amount to be assessed, the timely payment discount will be disallowed, interest and penalty due will be added. Interest will continue to accrue until the tax is paid. The penalty is a fixed percentage of the tax due.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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

PURPOSE: This rule indicates the lack of authority for the director of revenue to waive outstanding sales tax.

(1) The director of revenue will not waive tax nor will s/he release or compromise a claim for outstanding tax due.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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

PURPOSE: This rule interprets the sales tax law as it applies to the issuance of a jeopardy assessment by the director of revenue.

(1) When the director may have reason to believe a taxpayer is about to discontinue business, dispose of assets, or for any other reason the director believes the payment of sales tax due the state is jeopardized, the director may issue a jeopardy assessment for the amount of tax to be paid and demand the same which becomes due and payable immediately upon that notice to the taxpayer.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.566 Itinerant or Transitory Sellers

PURPOSE: This rule interprets the sales tax law as it applies to itinerant or transitory sellers.

(1) Any retail business or any entertainment, recreation or place of amusement which is temporary or itinerant in nature may file its returns and payments on a daily basis with the Department of Revenue. If returns and payments are not made on a daily basis, the seller may file a return and payment with the Department of Revenue at the close of the event.

(2) Any duly authorized agent of the director, upon a personal visitation, is empowered to order the seller to ascertain the appropriate amount of tax due and submit payment to him/her at the close of each business day or at the close of the event. In all cases, sellers shall require proper identification and credentials before submitting payments to the agent and require a written receipt to be issued by the agent.

(3) Accurate records identifying gross receipts shall be maintained by each seller on all transactions.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.568 Sampling

PURPOSE: This rule authorizes the use of sampling in conducting a sales tax audit.

(1) The use of sound audit sampling techniques generally benefit both the taxpayer and the director of revenue. Audit sampling techniques generally reduce the time necessary to complete audit field work and reduce

the taxpayer's time and effort in retrieving documents for audit purposes.

(2) The director of revenue or his/her duly authorized agent may use statistical sampling methods in lieu of a one hundred percent (100%) examination of records in conducting a sales/use tax audit.

(3) Statistical sampling methods include those procedures which utilize random selection and are capable of projecting population values with a known reliability.

(4) Upon written agreement by the taxpayer, the director of revenue or his/her duly authorized agent may utilize nonstatistical sampling methods in lieu of a one hundred percent (100%) examination of the records in conducting a sales/use tax audit.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***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 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 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.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) 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 subsidiary 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 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 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 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

PURPOSE: This rule interprets the sales tax law as it applies to the filing of liens.

(1) In any case in which any tax, interest or penalty imposed under the sales tax statutes is not paid when due, the director of revenue may file or record with the recorder's office of the county in which the person owing sales tax, interest or penalty resides or has his/her place of business, a Notice of Lien specifying the amount of tax, interest or penalty due and the name of the person liable for the same.

(2) A lien may be released by filing for record in the office of county recorder a release executed by the director of revenue.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.586 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

PURPOSE: This rule defines computer software programs that are subject to sales tax and outlines specifics where the sales tax is applicable, with examples included for clarification.

(1) Prewritten (canned) programs are programs prepared, held or existing for general or repeated use, including programs developed for in-house use and subsequently held or offered for sale or lease. The programs may be transferred to the customer in the form of punched cards, data or magnetic tape or by listing the program instructions on coding sheets. In some cases they are usable as written, however, in most cases it is necessary that the program be modified, adapted and tested to meet the customer's particular needs. Sales tax applies to the sale of tangible personal property, including coding sheets, cards or magnetic tape, on which or into which those prewritten (canned) programs have been coded, punched or otherwise recorded.

(2) Sales tax applies whether title to the tape or other property upon which the program is coded, punched or otherwise recorded, passes to the customer or the program is recorded on tape or other property furnished by the customer. The temporary transfer of possession of a program, for consideration, for the purpose of direct use or to be recorded by the customer, is a lease of tangible personal property and the tax applies unless the property is leased in substantially the same form as acquired by the lessor and the lessor has paid sales tax reimbursement or use tax with respect to the property.

(3) Sales tax applies to the entire amount charged to the customer. Where the consideration consists of license fees or royalty payments, all license fees or royalty payments, present or future, whether for a period of minimum use or for extended periods, are includable in the measure of tax.

(4) Programming charges to a prewritten program to adapt it to a customer's equipment, including translating a program to a language compatible with a customer's equipment, are in the nature of fabrication or services that are part of a sale and are taxable.

(5) Charges for assembler, compiler, utility and other prewritten programs provided to those who lease or purchase automatic data processing equipment are subject to tax whether the charges are billed separately or are included in the lease or purchase price of the equipment.

(6) Custom programs are programs prepared to the special order of a customer. This type of program is classified as intangible personal property and is not subject to tax. The real object sought by a purchaser of customized programs is the service *per se* of the seller and not the property produced by the service of the seller. Canned programs or standardized generic programs are programs purchased off the shelf or are programs of general application developed to be sold to and used by many different customers with little or no modification. This type of program is classified as tangible personal property and is subject to tax. The real object sought by the purchaser of canned software or standardized generic programs is the tangible property and not the service.

(7) Example 1: The sale of computer video game programs used to operate computers, video games, Atari, Colecovision and Intellivision hardware and the like is the sale of tangible personal property and is subject to tax.

(8) Example 2: Computer software programs used to operate business computers, personal computers, word processors, display writers and other similar hardware are considered the sale of tangible personal property and subject to tax.

(9) Program installation, maintenance of software and training services are taxable under the following circumstances:

(A) The purchase of the services is mandatory under the terms of an agreement to purchase software;

(B) Even though the purchase of the services is not mandatory under a software purchase agreement, the purchase of the services is taxable if software updates are included in the purchase price for the services and the services are not separately stated; or

(C) The purchase of the services, though not part of a mandatory agreement to purchase software, is included in the total price for the purchase of software and the services are not separately stated.

(10) Program installation, maintenance of software and training services are not taxable under the following circumstances:

(A) The purchase of the services is not mandatory under a software purchase agreement and the services are separately stated on the purchase invoice from software or other items purchased; or

(B) The services are purchased separately from software or other tangible personal property.

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.*

**Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961 and 144.705, RSMo 1959.*

***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

PURPOSE: This rule defines what constitutes the sale of advertising for purposes of section 144.034, RSMo.

(1) General Rules Applicable to Advertising Businesses.

(A) For the purposes of the sales tax law, exempt businesses, as defined in subsection (3)(B), are not taxable on their sales of advertising, including preliminary and finished art, film or tape. Exempt businesses are taxable on their purchases of tangible personal property used to create advertising in accordance with this rule.

(B) All other businesses are taxable on either their purchase or sale of finished art, film or tape (see subsection (3)(C)).

(2) Definitions.

(A) Advertising is the expression of an idea created and produced for reproduction and distribution in the media, such as—television, radio, newspapers, newsletters, periodicals, trade journals, publications, books, other printed materials, magazines, standardized outdoor billboards, direct mail or point-of-sale (POS) displays and which is designed to promote sales of a particular product or service or otherwise affect consumer behavior.

1. The following are some examples of items usually considered to be advertising:

A. Printed materials promoting sales of products and services, including fliers, handouts, brochures and sales promotion materials;

B. Direct mail and direct marketing materials (not distributed by mail), promoting sales of products and services;

C. POS materials, including displays, banners, posters and table tents and package designs, promoting sales of products and services;

D. Radio commercials, including film and video cassettes and tapes of them;

E. Television commercials, including film and video cassettes and tapes of them;

F. Audio or visual commercials for promotional or merchandising purposes, including audio and visual tapes, cassettes and films of them;

G. Print media advertising, including magazine ads, newspaper ads, periodical ads, trade journal ads, publication ads, book ads, other printed material, ads and newspaper inserts;

H. Billboards, signage, transit advertising (bus, rail, taxi and airport) and shopping mall and sports arena advertising and displays, promoting sales of products or service;

I. Product and service sales materials for dealers, distributors and other sales persons; and

J. Corporate image advertising.

2. The following are some examples of items usually considered not to be advertising:

A. Specialty advertising, for example—

(I) Tee shirts;
(II) Key chains;
(III) Glasswares;
(IV) Frisbees;
(V) Rulers;
(VI) Pens;
(VII) Calendars;
(VIII) Matchbooks;
(IX) Calculators;
(X) Clocks; and
(XI) Notebooks;

B. Business cards;

C. Brochures and books not promoting sales of products or services;

D. Annual reports;

E. Informational pamphlets not promoting sales of products or services;

F. Training materials not promoting sales of products or services;

G. Banners (not POS);

H. Posters (not POS);

I. Signs (not POS);

J. Educational films not promoting sales of products or services;

K. Employee benefit material and plan descriptions not promoting sales of products or services;

L. Business signage, logos and stationery designs;

M. Business directories including yellow pages;

N. Warranty books and product instructions not promoting sales of products or services; and

O. Items, including tangible items described in paragraph (2)(A)1., if mass produced or reproduced in quantities in excess of that reasonably anticipated to be necessary for an advertising campaign and sold for purposes other than promoting sales of a particular product or service.

3. In order to establish whether an item not previously listed in paragraph (2)(A)1. or 2. is or is not advertising or to rebut the classification of an item listed in these paragraphs, a sales transaction is subject to the true object or the essence of the transaction test. The facts of each particular transaction must be reviewed to determine whether the real object sought by the buyer is the advertising or the taxable property through which the advertising is communicated. The burden of proving that a sale is advertising is upon the taxpayer. The taxpayer must maintain sufficient documentation to establish that the sale qualifies as advertising. Examples of documentation include descriptions on the invoice, purchase order, estimates, bids and contracts.

(B) Exempt business as used in this rule means an advertising agency, broadcast station, newspaper, newsletters, periodicals, trade journals, publications, books, other printed materials or standardized outdoor billboard business exempt from the sales tax law pursuant to section 144.034, RSMo.

(C) Advertising agency is a business, not owned by an advertiser, which is directly responsible to an advertiser for and whose predominant functions as a business are the creation of, supervision of the production of and the placement of advertising and advertising materials in media such as—television, radio, newspapers, newsletters, periodicals, trade journals, publications, books, other printed materials, magazines, standardized outdoor billboards, direct mail or POS displays.

(D) Broadcast station is a radio or television enterprise which engages in the collection, writing, production and dissemination of news, public affairs or entertainment by means of transmitting sounds or signals through space or through wires intended for reception by the public on a receiving set.

(E) Production house is a business which is directly responsible to an exempt business or another production house for the production of preliminary or finished art, film or tape. Production house shall also be construed to mean any advertising business which is not an exempt business.

(F) Nontaxable service is a service rendered by exempt and nonexempt businesses that is not related to the sale or production of tangible personal property and tax does not apply to its charges. Examples of these nontaxable services include: writing original manuscripts and news releases; composing music, conducting research and compiling statistical or other information; providing time and space for advertising; arranging for the placing of advertising in newspapers, magazines, television, radio, billboards, transportation facilities or other media; securing the services of actors, directors and artists; and delivering or causing the delivery of brochures, pamphlets, cards and similar items after passage of title. Tax does not apply to services which relate to preliminary art, film or tape. Charges for items like supervision, consultation, postage, express, transportation and travel expense are likewise not taxable if they are related to the rendering of nontaxable services.

(G) Tax does not apply to services which relate to preliminary art, film or tape. Preliminary art, film and tape means art, film or tape prepared by a person engaged in the advertising business for the purpose of conveying or demonstrating an idea or concept for acceptance by a buyer before the final approval is given by a buyer for finished art or finished film or tape. Examples of preliminary art, film and tape are—

1. Roughs;
2. Visualizations;
3. Comprehensives;
4. Layouts;
5. Sketches;
6. Drawings;
7. Paintings;
8. Designs;
9. Story boards;
10. Rough cuts of film and tape;
11. Initial audio and visual tracks;
12. Work prints;
13. Music mixing or sound effects; and
14. Provision of or serving as talent, models, directors, producers, artists and editors.

(H) Finished art or finished film or tape is the final art used in print advertising for actual reproduction by photochemical or other process. In the case of broadcast advertising, finished film and tape means the master tape or film and duplicate prints.

(I) Services rendered during the production of items listed in paragraph (2)(A)1. or 2. are nontaxable if performed by an exempt business.

(3) Specific Rules Applicable to Advertising Businesses.

(A) Sales of preliminary art, film or tape by exempt businesses are nontaxable.

(B) Sales of preliminary art, film or tape by all other advertising businesses (production houses) are taxable unless—

1. The charge for these materials is billed separately, either on a separate billing or as a separate charge on the billing for the finished art, film or tape, and the charge is clearly identified on the billing as for preliminary art, film or tape; or

2. The taxpayer otherwise maintains sufficient documentation to establish that the sale qualifies as preliminary art, film or tape. Examples of documentation include descriptions on the invoice, purchase orders, estimates, bids and contracts. The burden of proving that a sale is nontaxable advertising service is upon the taxpayer.

(C) Sales of finished art, film or tape by exempt businesses are nontaxable. Sales of finished art, film or tape by businesses other than exempt businesses are taxable. The materials used by production houses and other nonexempt businesses in the production of advertising may be purchased without payment of sales tax if they comply with 12 CSR 10-3.532—12 CSR 10-3.538 and these materials become component parts of finished art, film or tape which will later be sold as taxable tangible personal property.

(D) Materials which are used by exempt businesses in the production of advertising products and materials which become component parts of the preliminary and finished art, film or tape are subject to tax upon the purchase by exempt businesses.

(E) Sales by exempt and nonexempt businesses of tangible personal property which are not advertising themselves but on which advertising is placed are subject to sales tax. This includes specialty advertising items.

(F) Items consumed by an advertising business are taxable. An advertising business is a consumer of the tangible personal property used in the operation of its business such as—stationery, ink, paint, tools, drawing boards, t-squares, pens, pencils and other office supplies. Taxes apply to the sale of this property to all advertising businesses at the time of purchase.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) 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 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.620 Review of Assessments by the Administrative Hearing Commission

PURPOSE: This rule indicates the time period a taxpayer has to file a written complaint with the Administrative Hearing Commission concerning a final decision by the director of revenue.

(1) A taxpayer may appeal a final decision of the director of revenue by filing a written complaint with the Administrative Hearing Commission within sixty (60) days after the mailing or delivery of the final decision, whichever is earlier (see section 144.261 and 621.050, RSMo).

(A) The sixty (60)-day appeal period begins to run on the mailing date of the decision or on the delivery date if the decision is hand-delivered to the taxpayer, whichever date is earlier.

(B) A complaint filed by any means other than registered or certified mail is considered to be filed in the commission on the date the complaint is actually received by the commission. A complaint filed by registered or certified mail is considered to be filed with the commission on the date it is mailed by the taxpayer.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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

PURPOSE: Under the sales tax law (sections 144.010 and 144.510, RSMo), this rule establishes the requirement of reporting and remitting sales taxes on a quarter-monthly period to protect state revenue and improve the cash flow of revenue for the state.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) For purposes of this rule, the following terms shall mean:

(A) State sales tax means the tax imposed by sections 144.010—144.525, RSMo and the additional sales tax imposed by sections 43 and 47, Article IV of the *Missouri Constitution*, but does not include any sales tax imposed by political subdivisions of the state;

(B) Quarter-monthly period means—

1. The first seven (7) days of a calendar month;

2. The eighth to fifteenth day of a calendar month;

3. The sixteenth to twenty-second day of a calendar month; and

4. The portion following the twenty-second day of a calendar month to the end of that month;

(C) Quarter-monthly remittance means the tax required to be collected for the quarter-monthly periods that must be remitted to the director of revenue prior to the filing of the monthly return;

(D) Return means the monthly return required to be filed under sections 144.080 and 144.090, RSMo;

(E) Unpaid amount means the aggregate state sales tax required to be collected less the compensation authorized in section 144.120, RSMo; and

(F) Underpayment means ninety percent (90%) of the unpaid amount for the quarter-monthly period minus the amount of the timely remittance for the same period.

(2) If any seller has collected or been required to collect aggregate state sales tax of fifteen thousand dollars ($15,000) or more in each of at least six (6) months during the prior twelve (12) months, the seller shall remit payment to the director of revenue on a quarter-monthly basis on a form or to a depository designated by the director of revenue.

(3) Payment and the form will be timely if mailed to the address provided on the approved form within three (3) banking days after the end of the quarter-monthly period or is actually received by the director of revenue in Jefferson City, Missouri or deposited in a depository designated by the director within four (4) banking days after the end of the quarter-monthly period. Banking days shall not include Saturday, Sunday, legal and local holidays observed by the United States Postal Service.

(4) A seller subject to this rule will be considered to have complied with the requirements for remitting quarter-monthly sales tax and would not be subject to an underpayment penalty of five percent (5%) if his/her quarter-monthly payments are at least—

(A) Ninety percent (90%) of the unpaid amount (defined in section (1) of this rule) at the end of a quarter-monthly period; or

(B) One-fourth (1/4) of the average monthly sales tax liability of the seller for the preceding calendar year and the seller had a state sales tax liability for at least six (6) months of the previous calendar year. The month of the highest liability and the month of the lowest liability shall be excluded in computing the monthly average.

(5) The penalty of five percent (5%) shall not be imposed if the seller establishes that the failure to make a timely remittance of at least ninety percent (90%) was due to reasonable cause and not due to willful neglect.

(6) A seller who fails to make a timely quarter-monthly remittance will be assessed a penalty equal to five percent (5%) of the difference between the amount of any timely remittance and the lesser of the amounts computed under subsection (4)(A) or (B).

(A) Example 1: Business A receives an estimate of five thousand dollars ($5000) per quarter-monthly period. Business A's actual tax collections are six thousand dollars ($6000) per quarter-monthly period. If business A pays the five thousand dollar ($5000) estimate timely, no penalty is charged. If business A underpays the estimate by two thousand dollars ($2000) (it pays three thousand dollars ($3000)), the penalty is five percent (5%) of the difference between the amount paid, three thousand dollars ($3000), and the estimate, five thousand dollars ($5000). The penalty is calculated as follows: $5000 – $3000 = $2000 × 5% penalty = $100.

(B) Example 2: Assume the same circumstances as in Example 1 except that business A's actual collections for the quarter-monthly period are four thousand dollars ($4000), which is one thousand dollars ($1000) less than the estimated tax. The penalty would be thirty dollars ($30) calculated as follows: $4000 × 90% = $3600 – $3000 timely payment = $600 underpayment × 5% penalty = $30.

(7) A seller who can demonstrate to the director of revenue's satisfaction that s/he has

not been required to make any quarter-monthly remittance during six (6) months of the previous twelve (12) months and has collected an aggregate amount of fifteen thousand dollars ($15,000) or more by the end of the month will not be penalized for failure to make remittance for the quarter-monthly periods of the first two (2) months in which s/he was otherwise required to have complied with the provisions of this rule.

(8) Sellers remitting state sales tax on the accelerated basis are required to file a monthly return and remit any unpaid amounts.

(9) A seller making accelerated payments under this rule who desires to protest any portion of the tax shall indicate the protested tax amounts on the monthly return. The protested tax should not be shown at the time the accelerated payments are made.

(10) Notwithstanding any other rule relating to state sales tax to the contrary, this rule shall be in force and effect.

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.*

**Original authority 1983, amended 1986.*

12 CSR 10-3.830 Diplomatic Exemptions—Records to be Kept by Sellers as Evidence of Exempt Sales

PURPOSE: This rule sets forth the criteria and procedure for obtaining diplomatic exemptions from sales tax based upon the department's participation in the sales tax exemption program conducted by the United States Department of State.

(1) Effective February 15, 1986, diplomatic and consular personnel are exempt from Missouri sales tax on their purchases provided that the person claiming the exemption presents an official sales tax exemption identification (ID) card issued by the United States Department of State. The ID card must include the photograph of the individual claiming exempt status, the signature of the individual, the ID number designated for the individual as well as the expiration date for the exemption.

(2) The diplomatic and consular personnel exemption is subject to any limitations indicated upon the ID card.

(3) Example: Diplomat A presents an exemption card to a hotel. The exemption card indicates that s/he is exempt from sales tax on all purchases except hotel room accommodation charges. The hotel charges Diplomat A for his/her hotel room, meals and incidental purchases from the hotel gift shop. Diplomat A is exempt on the meal charges and incidental purchases; however, the hotel must collect sales tax on the hotel room charges.

(4) The seller shall be required to keep as evidence of the exempt sale the following information to be recorded on each sales invoice; the seller remains liable for the applicable sales tax if the seller fails to maintain this information recorded on the sales invoice establishing an exempt diplomatic and consular personnel sale:
(A) Date of transaction;
(B) Name of the person claiming exempt status;
(C) ID number on the ID card;
(D) Expiration date on the ID card;
(E) Statement of exempt status on the ID card including any stated limitations (that is, total exemption from sales tax, partial exemption from sales tax); and
(F) Signature of the individual claiming the exempt status.

(5) Effective February 15, 1986, the "Foreign Government Exemption Card," DOR form 598, will become invalid. This exemption card was printed on cardstock paper, four inches by five inches (4" x 5") in size, white in color, bearing the caption "Foreign Government Exemption Card" and was signed by the director of revenue on the bottom left-hand corner. It should not be accepted as a valid exemption from Missouri sales tax. The Department of Revenue will discontinue the issuance of exemption cards pursuant to sections 144.030.1. and 144.615, RSMo on February 15, 1986.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Dec. 3, 1985, effective Feb. 24, 1986.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.832 Diplomatic Exemptions—Acknowledgement and Procedure for Requesting

PURPOSE: This rule sets forth the criteria and procedure for obtaining diplomatic exemptions from sales tax based upon the department's participation in the sales tax exemption program conducted by the United States Department of State.

(1) Foreign diplomatic and consular personnel may be exempt from Missouri sales tax pursuant to section 144.030.1, RSMo if the laws of the United States of America and treaty obligations between the United States and foreign countries so exempt them from state sales tax.

(2) Effective February 15, 1986, the determination of exempt status for diplomatic and consular personnel will be made by the United States Department of State. Any person claiming exempt status from Missouri sales tax based upon his/her diplomatic or consular status shall make application to the United States Department of State, Office of Foreign Missions, Washington, D.C.

(3) The United States Department of State, upon reviewing applications for exemption from sales tax, will issue exemption cards to qualified individuals based upon reciprocal treaty obligations and other laws between the United States and the foreign country.

(4) The Missouri Department of Revenue will cease issuing exemptions from sales tax for diplomatic and consular personnel after February 14, 1986. All exemptions issued on or before February 14, 1986, will terminate and expire effective February 14, 1986.

(5) Honorary consuls are not eligible for exemptions from sales tax. The Department of Revenue will discontinue the issuance of exemption cards pursuant to sections 144.030.1. and 144.615, RSMo on February 15, 1986.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Dec. 3, 1985, effective Feb. 24, 1986.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.834 Titling and Sales Tax Treatment of Boats

PURPOSE: This rule clarifies the treatment of sales tax on the sale and lease of boats, motorboats and watercraft.

(1) When an individual purchases a motorboat or vessel required to be titled under Chapter 306, RSMo, a sales tax on the Purchase price of the boat shall be paid to the Department of Revenue, Division of Motor Vehicle, by the purchaser at the time the boat is titled.

(2) All other boats and watercraft not required to be titled under Chapter 306, RSMo are subject to the general sales tax collection methods under Chapter 144, RSMo as follows: The seller of boats or watercraft shall collect and remit sales tax on the gross receipts received from the sale of the boats or watercraft.

(3) Persons, including individuals, registered boat dealers, firms, corporations or divisions, engaged in the lease or rental of motorboats, boats or other watercraft shall have the option of—

(A) Paying taxes at the time of purchase or titling, depending on the type of craft, on the full purchase price of the boat, motorboat or other watercraft; or

(B) Collecting and remitting the sales tax on the gross receipts derived from lease or rental of the boats, motorboats or watercraft.

(4) Where the lessor opts to collect and remit sales tax based upon the lease or rental of the boats, motorboats or watercraft, the lessor shall register with the Motor Vehicle Bureau of the Department of Revenue as a lease/rental company under section 144.070, RSMo. The lessor should also present a resale exemption certificate to the vendor of the watercraft or boat, if the watercraft or boat does not require a title. If the motorboat or vessel requires titling, the lessor should present to the Department of Revenue his/her lease/rental number.

(5) Any person, firm, corporation or division, leasing or renting boats, vessels or watercraft not required to be titled and registered shall not be required to collect sales tax on the gross receipts from the lease or rental of this watercraft as a fee paid in or to a place of amusement.

(6) Any person, firm, corporation or division, which leases or rents boats, vessels or watercraft not required to be titled or registered and elects to collect and remit tax on the gross receipts from the lease or rental of same shall register with the Department of Revenue, Business Taxes Bureau.

(7) Example 1: Individual A purchases a motorboat from a registered boat dealer. The individual is required to title the motorboat with the Department of Revenue, Motor Vehicle Bureau. At the same time, the purchaser of the boat shall pay sales tax on the purchase price of the boat.

(8) Example 2: Individual B purchases a canoe from a boat dealer. As the canoe is a watercraft not required to be titled under Chapter 306, RSMo, the boat dealer is required to collect and remit the sales tax on the gross receipts of the sale of the canoe.

(9) Example 3: Joe Doe's Boat Rental rents motorboats and canoes. In doing so, Joe Doe has the option to pay sales tax at the time of titling the motorboats and at the time of purchase of the canoes, or to collect and remit sales tax on the gross receipts from the rental of both the motorboats and canoes. If Joe Doe opts to pay sales tax at the time of purchase, he must pay sales tax to the Motor Vehicle Bureau on the motorboats, and receive the title. He must pay sales tax at the time of purchase to the vendor on the canoes, because they are not required to be titled under Chapter 306, RSMo. If Joe Doe opts to collect sales tax on the rental receipts of the motorboats and canoes, he must register with the Motor Vehicle Bureau as a lease/rental company. Joe Doe should provide his lease/rental number to the Motor Vehicle Bureau at the time of titling of the motorboats. He must also sign a resale exemption certificate to present to the boat dealer on canoes purchased, on which he intends to collect sales tax from the gross receipts of the rental. Joe Doe must choose one (1) or the other method and treat all boats, vessels and watercraft in the same manner for sales tax purposes.

AUTHORITY: section 144.270, RSMo (1992). Original rule filed May 21, 1986, effective Aug. 25, 1986.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.836 Payment of Filing Fees for Lien Releases

PURPOSE: This rule clarifies the payment of filing fees to the county recorder for lien releases (section 144.380, RSMo).

(1) With each group of discharge of tax liens the county recorder will receive a statement entitled Liens to be Released. The statement will list each discharge of tax lien which must be filed. The statement of liens to be released must be returned to the Department of Revenue on a weekly basis. The lien release statements will be accumulated by the Department of Revenue and the county recorder will be paid on a quarterly basis. All statements for the calendar quarter must be submitted to the department no later than the fifteenth day of the month following the end of the quarter. If the statements are submitted after the fifteenth of the month they will not be paid until the end of the next quarter.

AUTHORITY: section 144.270, RSMo (1994). Original rule filed Nov. 19, 1986, effective March 12, 1987.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.838 Payment of Filing Fees for Tax Liens

PURPOSE: This rule clarifies the payment of filing fees to the county recorder for tax liens (section 144.380, RSMo).

(1) With each group of tax liens the county recorder will receive a statement entitled Liens to be Filed. The statement will list each lien to be filed in the county. It will also provide an area for the recorder to insert an identifying number for each lien. The statement must be returned to the Department of Revenue on a weekly basis. The lien filing statements will be accumulated by the Department of Revenue and the county recorder will be paid on a quarterly basis. All statements for the calendar quarter must be submitted to the department no later than the fifteenth day of the month following the end of the quarter. If the statements are submitted after the fifteenth of the month they will not be paid until the end of the next quarter.

AUTHORITY: section 144.270, RSMo (1994). Original rule filed Nov. 19, 1986, effective March 12, 1987.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.840 Photographers

PURPOSE: This rule clarifies the applicability of sales tax to photographers.

(1) Sales by all types of photographers, (wedding, commercial, portrait, aerial) are subject to sales tax in their entirety without any deductions. Although services rendered frequently represent a substantial portion of their total charges they may not deduct labor for taking pictures, furnishing settings or backgrounds, developing, retouching or enlarging negatives, since they are creating tangible personal property as a result of their services or labor. Sales by photographers are taxable because the true object of the photographers' customers is to obtain the property produced by the service (see *Signs by Sherri*

v. Director of Revenue, Case No. RS-84-2141 (A.H.C. 3/5/87) March 5, 1987).

(2) Photographers and other persons purchasing tangible personal property such as paper, which becomes a component or an ingredient part of a finished product which will ultimately be sold at retail, if applicable, should purchase their supplies under a resale exemption certificate. However, supplies, equipment, dry plates, film, chemicals and other materials purchased for their own use or consumption are subject to sales tax.

(3) In the opinion of the Department of Revenue, the imposition of sales tax on gross receipts on sales of photographs under this rule has no affect on the taxpayer's rights under the Federal Copyright Law of 1978 or under state property law relating to the image from which the photograph was produced.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.842 Surety Companies—Remittance Requirements

PURPOSE: This rule clarifies the Department of Revenue's position regarding surety bond payments and suspended insurance companies.

(1) The Director of Revenue shall maintain on file a list of surety companies approved to underwrite sales/use tax bonds in Missouri.

(2) Those surety companies not complying with rules of the Department of Insurance or who unreasonably fail to pay or otherwise provide for the payment, within thirty (30) days of notification that licensee has become delinquent in the payment of tax, additions to tax and interest, are subject to removal from the director's list of surety companies authorized to underwrite sales/use tax bonds in Missouri. Additionally, no future bonds will be accepted from this company until the time as the director reinstates the surety company.

(3) A sales/use tax licensee, who is bonded by a surety company that has been revoked or suspended by the Department of Insurance or removed from the director's list of insurance companies authorized to write sales/use tax bonds shall have sixty (60) days to file a new bond with the director of revenue. Failure to meet this requirement will result in the sales/use tax license being declared null and void.

AUTHORITY: section 144.270, RSMo (1994). Original rule filed June 12, 1987, effective Oct. 25, 1987.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.844 Letters of Credit

PURPOSE: This rule sets forth guidelines for the submission, acceptance and proceedings upon an irrevocable letter of credit that has been submitted in lieu of a Missouri Sales/Use Tax Bond.

(1) A letter of credit, issued by a commercial ban charter under the laws of Missouri or chartered pursuant to the National Banking Act, may be submitted to the Missouri Department of Revenue in lieu of a Missouri Sales/Use Tax Bond as required by section 144.087, RSMo. The letter of credit must be in an amount equal to the otherwise required bond.

(2) The letter of credit shall be irrevocable and the beneficiary shall be the Missouri Department of Revenue. Payment shall be made immediately upon presentment of a demand for payment signed by the director or his/her designated representative.

(3) All letters of credit shall conform to a required format. A standard letter of credit form embodying this format shall be provided by the Department of Revenue. All letters of credit shall be accompanied by an authorization for release of confidential information allowing the director or his/her designee to release confidential tax information to the issuing bank.

(4) A demand for payment upon a letter of credit may be presented for payment only upon reasons that bond proceeds would be demanded.

(5) All letters of credit must be negotiable at a financial institution located within Missouri.

(6) Letters of credit shall have a term of one (1) year and shall be automatically renewable on an annual basis for an additional five (5) years. A letter of credit may be cancelled by the issuer sixty (60) days after written notice is delivered to the Department of Revenue. Upon this notice the licensee shall be required to substitute a cash or surety bond within sixty (60) days. If the required bond is not received within that time period, the licensee's sales/use tax license shall be null and void.

(7) If a licensee desires to quit business or substitute a cash or surety bond for his/her letter of credit, the director shall retain the letter of credit for a period of ninety (90) days or until the time the director is satisfied that no claims exist against the letter.

(8) A licensee shall be required to augment letters of credit in any situation where the licensee would be required to increase its coverage under a sales/use tax bond. This additional bonding requirement may be satisfied by increasing the letter of credit, submitting an additional letter of credit or submitting an additional surety bond or cash bond. Failure to increase the bond amount when required will result in the sales/use tax license being declared null and void.

AUTHORITY: section 144.270, RSMo (1994). Original rule filed Sept. 28, 1987, effective Jan. 14, 1988.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

Authorization for Release of Confidential Information

I herby authorize release of confidential tax information to ________________________ for the purpose of making demand for payment on letter of credit number ________________ as long as the obligation remains in force and effect. Release of this information to the named banking institution does not give the banking institution authority to request information other than information concerning the delinquent periods for which a demand for payment is being made. I also release the director of revenue and Department of Revenue personnel from any and all liability pursuant to any disclosure to this banking institution of confidential tax information resulting from release of subject information under section 32.057, RSMo and supplemental thereto.

In witness whereof I, (We), have duly executed the foregoing this ________________________________day of _____19_______

____
Owner/Officer Signature

____
Name and Title Typed and Printed

Before me personally appeared ________________________ who acknowledges that s/he signed the foregoing as his/her free act and deed.

I have hereunto set my hand and affixed my official seal at my office in this _________________ day of ____________ 19 __________.

My term expires __________________________________ ____
Notary Public

Sales and Use Tax
Irrevocable Letter of Credit

TO: Missouri Department of Revenue (Beneficiary)
Office of Registration/Records
TO: P.O. Box 840R
TO: Jefferson City, MO 65105

Amount U.S. $ ______________________________________ ______________________________
Letter of Credit Number

Date of Issuance _____________________________________

At the Request of_____________________________________

Doing business as ____________________________________

of ____ state of ____
We hereby issue our irrevocable letter of credit in favor of the Missouri Department of Revenue in the sum of ________ dollars ($______) available by your demand for payment.

Demand under this irrevocable letter of credit must be accompanied by a statement of delinquent taxes, penalties and interest due the Missouri Department of Revenue and marked üüDrawn against irrevocable letter of credit number _____________________."

This obligation shall be deemed automatically renewed on an annual basis for a period of not less than five (5) years from the date of this letter. This credit will expire in full and finally five (5) years from the date of issuance. The issuing banking institution may cancel the letter of credit and be released of future liability hereunder by delivering sixty (60) days' prior written notice to the Department of Revenue at the address shown above. Cancellation shall not effect any liability incurred and accrued hereunder prior to the termination of the sixty (60)-day period.

Upon receipt of notification, you may make your one (1) demand for payment for the unused balance of this irrevocable letter of credit, mentioning thereon our letter of credit number _______________ accompanied by your signed statement that the agreement is still outstanding and that the proceeds of the payment will be retained and used in lieu of the letter of credit with any unused portion to be returned to the accountee.

We hereby engage with you that demands made in conformity with the terms of this credit will be duly honored on presentation.

In witness whereof, we have duly executed the foregoing this __________________________ day of _____________________, 19_____

__________________________ ____________________________ ______________________________________
Issuing Bank Institution Address City State Zip

_________________________________ By _____________________________________
Bank routing transit number Signature and Title of Bank Official

Before me personally appeared _______________________ who acknowledges that s/he signed the foregoing as his/her free act and deed.

I have hereunto set my hand and affixed my official seal at my office in this ___________________ day of _________________ 19 _____.

My term expires ____ ____
Notary Public

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 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.848 Concrete Mixing Trucks

PURPOSE: This rule interprets the sales tax law as it applies to a new or expanded plant and interprets and applies section 144.030.2(5), RSMo.

(1) When purchased to establish a new manufacturing plant, concrete mixing trucks, having mixing drums permanently mounted to the truck chassis and rotated by the truck's power, are considered machinery and equipment used directly in manufacturing a product to be sold ultimately for final use or consumption, qualifying them for exemption from sales tax. Should the taxpayer later expand the fleet of concrete delivery trucks, these additional trucks would also qualify for the new or expanded plant sales tax exemption in section 144.030.2(5), RSMo (see Capitol Con Crete, Inc. vs. Director of Revenue, A.H.C. July 17, 1987).

(2) Example 1: Central Concrete entered the business of delivering concrete to contractors and homeowners in trucks designed to combine gravel, sand, cement and water while in transit to the delivery site. In order to begin operation, five (5) trucks were purchased. The purchase of these trucks qualifies for exemption from sales tax pursuant to section 144.030.2(5), RSMo.

(3) Example 2: Central Concrete, having been in business for several years, trades in the five (5) originally purchased delivery trucks for five (5) replacement trucks and three (3) additional trucks. In this particular case only the additional trucks would qualify for exemption under section 144.030.2(5), RSMo related to new or expanded manufacturing operations.

(4) Dump trucks purchased to haul concrete manufactured in a central mixing plant do not qualify for a manufacturer's exemption from sales tax because the trucks are not directly used in the manufacturing process.

AUTHORITY: sections 144.030.2(5) and 144.270, RSMo 1994. Original rule filed July 6, 1988, effective Oct. 27, 1988.*

**Original authority: 144.030.2(5) RSMo (1939), amended 1941, 1943, 1945, 1949, 1961, 1965, 1967, 1967, 1969, 1977, 1979, 1980, 1982, 1983, 1985, 1986, 1988, 1989, 1991, 1994 and 144.270, RSMo (1939), amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.850 Veterinary Transactions

PURPOSE: This rule interprets the sales tax law as it applies to veterinarians and interprets and applies section 144.010, RSMo.

(1) For purposes of the sales tax law, veterinarians are rendering services not subject to sales tax. Persons selling tangible personal property such as instruments, bandages, splints, syringes, furniture and equipment to veterinarians are subject to the sales tax on the gross receipts from all those sales.

(2) Veterinarians acting as retail merchants by making sales of leashes, collars, harnesses, food for nonfood producing animals and other similar property are responsible for collecting and remitting sales tax on the gross receipts derived from these sales. Veterinarians acting in this capacity should register with the Missouri Department of Revenue and issue exemption certificates for items purchased for resale. Purchases for resale subsequently used or consumed by the veterinarian are subject to the applicable sales or use tax. The veterinarian should accrue and remit this tax to the Missouri Department of Revenue.

(3) Veterinarians will be considered to have used or consumed items purchased for resale if they dispense these items to clients for no charge at the same time they provide a nontaxable service.

(4) Medications and vaccines administered to livestock or poultry in the production of food or fiber are exempt from sales and use tax. Also exempt are pharmaceuticals and biologicals exhibiting the following legends:

(A) "Caution: Federal law prohibits dispensing without prescription" (per section 503 of the Federal Food and Cosmetic Act); or

(B) "Caution: Federal law restricts this drug to use by or on order of a licensed veterinarian" (per Title 21 CFR 201.105).

(5) Products except medications and vaccines referred to in section (4), bearing labels such as Available through veterinarians, For sale to licensed veterinarians or Available through

licensed veterinarians exclusively are considered subject to sales tax.

(6) Veterinarians paying sales/use tax on purchases subsequently sold at retail are required to collect sales tax on these sales but may apply for a refund for the taxes paid at the time of purchase.

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.852 Orthopedic and Prosthetic Devices, Insulin and Hearing Aids

PURPOSE: This rule interprets the sales tax law as it applies to the sale of insulin, prosthetic and orthopedic devices, and hearing aids, and interprets and applies section 144.030, RSMo.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) All sales of insulin and prosthetic and orthopedic devices as defined on January 1, 1980 by the federal Medicare Program under Title XVIII of the Social Security Act of 1965, including hearing aids and hearing aid supplies, are exempt from Missouri sales tax.

(2) Prosthetic devices are defined by the federal Medicare Program under Title XVIII of the Social Security Act of 1965 as devices (other than dental) which replace all or part of the function of a permanently inoperative or malfunctioning internal body organ and include cardiac pacemakers; prosthetic lenses which replace the lens of an eye; breast prosthetics, including surgical brassieres for postmastectomy patients; maxillofacial devices and devices which replace all or part of the ear or nose; urinary collection systems, including Foley catheters, when replacing bladder function in cases of permanent urinary incontinence; hemodialysis equipment; colostomy and other ostomy bags and the necessary equipment required for attachment; and electronic speech aids if the patient has had a larynectomy or his/her larynx is permanently inoperative. Eyeglasses, contact lenses, bed pans and incontinent pants are not considered prosthetic devices and are subject to tax.

(3) Orthopedic devices as defined by the Federal Medicare Program under Title XVIII of the Social Security Act of 1965 include rigid or semirigid leg, arm, neck and back braces and casting materials which are directly used for the purpose of supporting a weak or deformed body member or restricting or eliminating motion in a diseased or injured part of the body; trusses; artificial legs, arms and eyes including terminal devices such as artificial hands, hoods and space shoes which replace part of a foot; stump stockings and harnesses when they are essential to the effective use of an artificial limb; and orthotics. Elastic braces, elastic stockings, arm slings, elastic wraps, garter belts, wheelchairs, walkers, canes and crutches are not considered orthopedic devices and are subject to sales tax.

(4) Also exempt from sales tax are items specified in Section 1862(A)(12) of the Social Security Act of 1965. Exempt items included in this class are those used in connection with the treatment, removal or replacement of teeth or structures directly supporting teeth. These terms encompass dentures, inlays, bridge work, filings, crowns, braces and other artificial dentistry and dental reconstructions which are made, manufactured or fabricated from molds or impressions made by dentists of the mouths of their particular patients and sold to dentists for insertion in the patient's mouth as a direct support of, substitution for, or part of the patient's teeth. Not exempt are dental equipment or supplies.

(5) The following is a list of orthopedic and prosthetic devices used in dentistry which the department considers to be tax exempt:

Restorative Materials
Acrylics
Aluminum crowns
Amalgam
Bases and liners
Cements
Chrome steel crowns
Copper bands
Crown forms
Dentin enamel adhesives
Denture anchors
Denture repair materials
Denture teeth
Gold
Mercury
Pins
Pit and fissure sealants
Porcelains
Posts
Temporary filling materials
Zinc oxide (Eugenol)

Prosthetic Devices And Supportive Materials
Acrylics
Bonding materials
Chrome alloys
Composed materials
Denture anchors
Denture repair materials
Denture teeth
Implant materials
Metal alloys

Orthodontic Devices and Materials
Arch bar splints
Bone grafting materials
Face bow head gear
Gor-Tex grafting material
Mucosal grafts (natural and artificial)
Orthodontic appliances
Orthodontic brackets
Orthodontic elastics
Orthodontic expansion screws
Orthodontic resins
Orthodontic separators
Orthodontic waxes
Orthodontic wires
Surgical wires

Endodontic Materials
Cresitine
Gutta percha points
Root canal sealants
Silver points

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.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

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 (1000) 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)___
	.151 (federal excise tax per gallon)
	.800 (Net per gallon subject to tax)
×	.0625 (state and local tax rate):
	.05 (tax per gallon)
×	1000 (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.*

12 CSR 10-3.856 Direct Pay Agreement

PURPOSE: This rule lists the requirements for a business or corporation to enter into a direct pay agreement with the Department of Revenue

(1) A business or corporation may apply in writing to the Department of Revenue for a direct pay agreement. By this agreement the Department of Revenue allows a business or corporation to pay sales taxes on its purchases directly to the department, rather than to the seller.

(2) The following requirements shall be satisfied before the Department of Revenue shall consider a business or corporation for a direct pay agreement:

(A) The application must be signed by the applicant business owner or an officer of the applicant corporation;

(B) The applicant business or corporation agrees to accrue and pay all taxes imposed by Chapters 66, 67, 92, 94 and 144, RSMo and Article IV, sections 43A and 47A of the Missouri Constitution on the purchases of all taxable items made by the applicant business or corporation excluding items which are exempted under Chapter 144, RSMo. Taxes authorized under Chapters 66, 67, 92 and 94, RSMo shall be accrued and paid based upon the place of business of the purchaser;

(C) All accrued sales taxes shall be paid in accordance with the filing status of the applicant business or corporation as determined by the Revised Statutes of Missouri. The applicant business or corporation shall be assessed penalties and interest in accordance with Chapter 144, RSMo for failure to file and to pay the accrued taxes in accordance with its filing status;

(D) The applicant business or corporation shall not qualify for the timely filing discount provided in section 144.140, RSMo; and

(E) Records must be submitted to demonstrate that the business or corporation annually purchases nonresaleable items in excess of seven hundred fifty thousand dollars ($750,000).

(3) The Department of Revenue has sole authority to decide whether the applicant qualifies for a direct pay agreement, subject to appeal to the Administrative Hearing Commission as provided by section 144.261, RSMo.

(4) An applicant who has been denied a direct pay agreement may reapply but shall be required to meet the original agreement qualifications.

(5) The holder of a direct pay agreement shall furnish a copy of the direct pay certificate to all sellers from whom it purchases taxable items. This certificate relieves the seller of any obligation of collecting from the holder, state and local taxes imposed by Chapters 66, 67, 92, 94 and 144, RSMo and Article IV, sections 43A and 47A of the Missouri Constitution. This certificate shall apply to all sales of taxable items after its date.

(6) A direct pay agreement and certificate shall remain valid until the Department of Revenue issues a cancellation notice.

(7) The Department of Revenue shall send notice of cancellation to the holder of the direct pay certificate by certified or registered mail.

(8) The holder may notify the Department of Revenue if s/he wishes to voluntarily relinquish a direct pay certificate.

(9) Upon receipt of a notice of cancellation from the Department of Revenue, the business or corporation, within ten (10) days from the date of the cancellation letter, shall notify each seller in writing that the direct pay certificate is no longer valid.

(10) The holder of a direct pay certificate shall be required to provide proof of qualification every five (5) years.

(11) Any seller who accepts a direct pay certificate in good faith from a purchaser may rely on the certificate until receiving written notice of cancellation from the purchaser or the department.

AUTHORITY: sections 144.190.4 and 144.270, RSMo 1994. Original rule filed May 2, 1989, effective Sept. 11, 1989.*

**Original authority: 144.190.4, RSMo (1939), amended 1941, 1943, 1945, 1979, 1986, 1988, 1991 and 144.270, RSMo (1939), amended 1941, 1943, 1945, 1947, 1955, 1961.*

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 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 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.860 Marketing Organizations Soliciting Sales Through Exempt Entity Fund-Raising Activities

PURPOSE: This rule interprets the sales tax applicable to marketing organizations soliciting sales through exempt entity fund-raising activities.

(1) Sales by marketing organizations through representatives or members of elementary and secondary schools, religious and charitable organizations and other not-for-profit entities exempt from sales or use tax are subject to Missouri sales tax on the marketing organizations' net receipts from those sales. Sales tax is not due on the amount retained by or returned to the exempt organization.

(2) Sales tax is due on transactions involving Missouri-based marketing organizations and tax exempt entities organized under the laws of Missouri.

(3) Sales tax shall be collected on each item sold in accordance with sections 144.010—144.510, RSMo and the tax may be collected by exempt organizations' members by a separate statement of the tax due on each sales slip or other evidence of sale. Local tax will be applied at the rate for the location of the instate marketing organization.

(4) The marketing organization should instruct the exempt organization that sales tax must be collected on the portion of gross receipts returned to the marketing organization.

(5) The tax due may be calculated on the proceeds to be returned to the marketing organization and then added to the original selling price (Example 1) or calculated on the proceeds to be returned to the marketing organization and included as part of the selling price (Example 2).

(6) Example 1: Marketing organization "A" agrees to provide widgets to the band at school "B" to be sold by band members to raise funds for a band trip. The widgets are to be sold for ten dollars ($10) each, with "A" to receive six dollars ($6) and "B" four dollars ($4) per widget. School "B" should collect thirty-seven cents (37¢) sales tax in addition to the ten-dollar ($10) sales price. The thirty-seven cents (37¢) represents sales tax at the hypothetical rate of 6.225% (the rate in effect for organization "A's" business location) on the six-dollar ($6) taxable receipts and should be remitted by school "B" to organization "A". The four dollars ($4) received by school"B" is exempt from tax. "A" is required to remit thirty-seven cents (37¢) to the Department of Revenue for sales tax on its six-dollar ($6) net receipts. It makes no difference whether school "B" (which collects ten dollars and thirty-seven cents ($10.37) from the customer) sends ten dollars and thirty-seven cents ($10.37) to the marketing organization "A" which then returns four dollars ($4) to band "B"; or sends only six dollars and thirty-seven cents ($6.37) to marketing organization "A".

(7) Example 2: Using the same facts as Example 1 in section (6), school "B" could charge ten dollars ($10) for the widget with the express understanding that the ten dollars ($10) charged includes the sales tax. The tax would be computed on the six dollars ($6) received by "A". The tax would still be thirty-seven cents (37¢) ($6 ě 6.225%). "A" would be required to remit thirty-seven cents (37¢) per widget to the Department of Revenue. School "B" would receive three dollars and sixty-three cents ($3.63) not subject to sales tax, per widget sold.

AUTHORITY: section 144.705, RSMo 1994. Original rule filed Feb. 23, 1989, effective Aug. 11, 1989.*

**Original authority 1959.*

12 CSR 10-3.862 Sales Tax on Vending Machine Sales

PURPOSE: This rule interprets the sales tax law as it applies to sales of items other than photocopies and tobacco-related products through vending machines under section 144.012, RSMo.

(1) Persons selling tangible personal property other than photocopies and tobacco-related products through vending machines are making retail sales. The sale shall be deemed to take place at the location of the vending machine. The local sales tax rate, if any, shall be based upon the location of the vending machine from which the tangible personal property is sold.

(2) A vendor is the person who owns the property sold through a vending machine. The vendor is responsible for reporting and remitting directly to the director of revenue state and local sales tax on one hundred thirty-five percent (135%) of the net invoice price of the tangible personal property sold. While the tax is based on one hundred thirty-five percent (135%) of the cost of the goods, the self accrual of the sales tax by the vendor shall be reported and remitted for the period in which the items are sold.

(3) A vending machine is defined as a coin or currency operated device which is used to sell tangible personal property without requiring the vendor's physical attention at the time of the sale. This is not limited to mechanically operated devices and includes honor boxes. Example: Jack has twelve (12) vending machines. Of this amount, six (6) are mechanically operated vending machines and six (6) are honor boxes located in various businesses throughout the city. Both the honor boxes and the mechanically operated machines qualify as vending machines.

(4) Exempt Location Sales.

(A) Sales of tangible personal property other than photocopies or tobacco-related products from vending machines located on the premises of specified nonprofit entities or organizations, as listed in paragraphs (4)(A)1.—3., are not subject to state or local sales tax. Locations at which personal property may be vended tax exempt include buildings or land owned, leased or occupied by these organizations and used for their religious, charitable or educational functions and activities. The organizations upon whose premises items may be vended tax exempt are—

1. Religious organizations granted an exemption under section 144.030.2(19), RSMo;

2. Charitable organizations granted an exemption under section 144.030.2(19), RSMo; and

3. Elementary and secondary schools operated at public expense.

(B) Vendors shall obtain a copy of the exemption letter issued by the Missouri Department of Revenue to the religious or charitable organization or elementary or secondary school prior to making tax exempt vending sales on the organization's or school's premises. Vendors shall be held liable for tax on all sales made from vending machines on premises of organizations for which they do not have a copy of the organization's exemption letter. Copies of those letters shall be maintained by the vending machine owner/operator for audit purposes.

(5) Vendors may use an average cost of goods sold and average exempt location sales to calculate their taxable sales and the tax liability on those sales. The net invoice price is the cost of the product, including freight, less any quantity or timely payment discounts. Products sold through vending machines outside Missouri are not subject to section 144.012, RSMo and the cost of these products shall not be included in the computation of the vendors' cost of goods sold.

(A) Example: On February 1, Bill purchases products to sell in his vending machines at a cost of fifteen thousand dollars ($15,000), including freight. The wholesaler allowed Bill a quantity discount of three percent (3%) plus a two percent (2%) timely payment discount. Both the quantity discount and the timely payment discount may be deducted when computing the net invoice price.

Purchase Price	$15,000.00	
Less quantity discount	$ 450.00	($15,000 × 3%)
Less timely payment discount	$ 300.00	($15,000 × 2%)
Net invoice price	$14,250.00	

(B) During February, Bill sold all of the products noted above for twenty-eight thousand five hundred dollars ($28,500). Bill has vending machines located on commercial property and on premises of public elementary schools. Bill has a copy of the school's tax exemption letter. The sales at the schools amounted to seven thousand one hundred twenty-five dollars ($7125) and sales at the other locations amounted to twenty-one thousand three hundred seventy-five dollars ($21,375). The sales at the exempt locations equal twenty-five percent (25%) of the gross sales.

(C) Bill may calculate this tax liability either by specifically identifying the cost of the items sold through each machine or by using an averaging method. If Bill uses the averaging method, the following calculation would be made:

	Taxable Locations	**Nontaxable Locations**
Gross sales	$21,375	$7125
Percent of gross at each type of Location	75%	25%

(D) After computing his gross sales at taxable and nontaxable locations, Bill must allocate his cost of goods sold to the taxable and exempt locations. As noted previously, Bill's net invoice price cost of goods sold for the month was fourteen thousand two hundred fifty dollars ($14,250).

	Cost of goods sold × Exempt/Nonexempt **Location Percentage**
Taxable Locations	$14,250 × .75=$10,688
Nontaxable Locations	$14,250 × .25=$ 3562

(E) To calculate his tax liability, Bill must multiply the cost of goods at the taxable locations by one hundred thirty-five percent (135%) to arrive at his taxable purchases under section 144.012, RSMo.

Cost of goods sold at Taxable Locations	$10,688.00
Taxed at 135% of Cost	× 1.35
Taxable Purchases	$14,429.00

(F) Bill's taxable location machines are located in both the City of Columbia and rural Boone County. The Columbia machines accounted for $12,825 (sixty percent (60%) of the taxable location sales of $21,375) and the rural Boone County machines amounted to $8550 (forty percent (40%) of the taxable location sales of $21,375). Bill must report sixty percent (60%) of his taxable purchases as taxable transactions for Columbia and remit tax at the combined state and local rate for the City of Columbia. Bill must report forty percent (40%) of taxable transactions for Boone County and remit tax at the combined state and local rate for Boone County.

Columbia taxable transactions	$14,429 ×.60=$8657
Boone County taxable transactions	$14,429 × 40=$5772

(G) The Columbia taxable transactions are taxed at the combined state and local tax rate for the City of Columbia. The Boone County taxable transactions are to be taxed at the combined state and local rate for Boone County.

(6) When a manufacturer sells the products s/he manufactured to other vendors and to the public through his/her own vending machines, the manufacturer shall self-assess tax on his/her vending machine sales at one hundred thirty-five percent (135%) of the average price at which the product is sold to other purchasers and vendors. Manufacturers who sell the products they manufacture through vending machines and do not make any sales to other purchasers or vendors shall self-assess tax on their vending machine sales at one hundred thirty-five percent (135%) of the total cost of the manufactured products, including materials, labor and manufacturing overhead.

(7) No allowance, credit or refund of sales tax shall be allowed to the vending machine owner or operator for loss due to spoilage, breakage or theft of items to be sold by the vending machine owner or operator through his/her machine.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 8, 1989, effective Jan. 26, 1990.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.866 Bulldozers for Agricultural Use

PURPOSE: This rule interprets the sales tax law as it applies to bulldozers used for agricultural purposes and interpretsand applies sections 144.010 and 144.030.2(22), RSMo.

(1) Bulldozers purchased for agricultural use may qualify as tax exempt purchases. To be tax exempt, the bulldozer must be used exclusively for agricultural purposes on land owned or leased for the purpose of producing farm products and used directly in producing farm products to be sold ultimately at retail or in producing farm products to be fed to livestock or poultry.

(2) Producing farm products includes tilling of fields and other soil preparation, the construction of dikes, soil conservation projects and flood control.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 16, 1990, effective May 11, 1990.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

Next Section

12 CSR 10-3.868 Not-for-Profit Civic, Social, Service or Fraternal Organizations—Criteria for Exemption

PURPOSE: This rule sets forth the criteria which must be met by an organization in order to claim sales tax exemption as a not-for-profit civic, social, service or fraternal organization.

(1) Sales made by or to not-for-profit civic, social, service or fraternal organizations in their regular functions and activities are subject to sales tax. If a civic, social, service or fraternal organization holds a fund-raising activity with the net proceeds from the activity going toward a recognized charitable or civic purpose, these sales may not be subject to sales tax.

(2) Example: A fraternal organization operates a restaurant and bar. Gross receipts on sales at the bar and restaurant are subject to sales tax, even if part of the receipts are subsequently given to charitable causes. Food, beverages and other items sold at retail through the restaurant and bar shall be purchased under a resale exemption certificate and sales tax shall be remitted on the organization's gross receipts.

(3) Example: The same fraternal organization has a special dinner-dance from which the net proceeds will be given to XYZ charity. The fraternal organization may use its letter of exemption to purchase food and beverages and other items used for the dinner-dance tax free. Its total purchases are one thousand dollars ($1000). Gross receipts from admissions and sales are four thousand dollars ($4000). The organization is not required to collect or remit sales tax on the gross receipts derived from admission to the dinner-dance or from sales of other tangible personal property, provided the three thousand dollars ($3000) in net proceeds ($4000—$1000=$3000) are designated to XYZ charity.

(4) Example: The fraternal organization incurs normal expenses associated with operating the organization, such as utilities and repair parts for maintenance. These expenses are not considered part of the charitable or civic function of the organization and they are subject to sales tax. The organization shall not use its letter of exemption to avoid paying sales tax on operating expenses.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 16, 1990, effective June 28, 1990.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-3.870 Information Required to be Filed by Not-for-Profit Organizations Applying for a Sales Tax Exemption Letter

PURPOSE: This rule sets forth the requirements which must be met by a not-for-profit organization applying for a sales tax exemption letter.

(1) Religious and charitable organizations and institutions; public and private elementary and secondary schools; not-for-profit civic, social, service or fraternal organizations; not-for-profit public and private institutions of higher education; eleemosynary and penal institutions; benevolent, scientific and educational associations formed to foster, encourage and promote the progress and improvement in the science of agriculture and in the raising and breeding of animals; nonprofit summer theatres applying for a letter of exemption from sales tax pursuant to section 144.030.2(19), (20), (21) or (22), RSMo are required to file the following documentation with the Department of Revenue:

(A) Application for Sales/Use Tax Exemption, form DOR-1746, and Missouri Sales/Use Tax Exemption Application Affidavit, Form DOR-1922;

(B) A copy of the Articles of Incorporation, Bylaws or both;

(C) A copy of the Section 501 tax exemption letter or ruling issued by the United States Department of Treasury, Internal Revenue Service;

(D) A copy of the tax exemption ruling issued by the assessing officers in each county in which the applicant's property is or will be located for property tax purposes;

(E) Financial statements of the organization for the previous three (3) years, indicating sources and amount of revenue, and a breakdown of the disbursements, or if just beginning the organization, an estimated budget for one (1) year;

(F) A copy of the not-for-profit certificate, registration or charter issued by the Missouri secretary of state's office, if registered or incorporated within Missouri; and

(G) Any other documents, statements and information as may reasonably be requested by the Department of Revenue.

(2) If any of the documents requested in subsections (1)(B)—(F) are not submitted with the application and affidavit, a letter of explanation must accompany the application.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 16, 1990, effective June 28, 1990.*

**Original authority 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

Next Section