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

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Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions

12 CSR 10-110.013 Drugs and Medical Equipment

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

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

(2) Definition of Terms.

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

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

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

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

(3) Basic Application of Tax.

(A) Sales of prescription drugs, insulin, medical grade oxygen, drug samples and materials used to manufacture samples, which may be dispensed by a licensed practitioner are exempt from tax. Sales of over-the-counter drugs when sold to an individual with a disability or to the individual's agent are exempt from tax. When selling over-the-counter drugs to an individual with disability, the retailer should obtain a purchaser's signed statement of disability. The retailer should retain these statements for three (3) years. The statement should include the purchaser's name, type of purchase and amount of purchase, and be signed by the purchaser or the purchaser's agent. The retailer should request a form of identification, such as driver's license, credit card, etc. to verify the identity of the purchaser. Sales of prosthetic devices as defined on January 1, 1980, by the Federal Medicare Program under Title XVIII of the Social Security Act of 1965 are exempt from tax.

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

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

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

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

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

(4) Examples.

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

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

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

(B) Examples of exempt prosthetic devices include:

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

(C) Examples of exempt orthopedic devices include:

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

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

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

D. Bases and liners
E. Cements
F. Chrome steel crowns
G. Copper bands
H. Crown forms
I. Dentin enamel adhesives
J. Denture anchors
K. Denture repair materials
L. Denture teeth
M. Gold
N. Mercury
O. Pins
P. Pit and fissure sealants
Q. Porcelains
R. Posts
S. Temporary filling materials
T. Zinc oxide (Eugenol)

2. Prosthetic devices and supportive materials.
A. Acrylics
B. Bonding materials
C. Chrome alloys
D. Composed materials
E. Denture anchors
F. Denture repair materials
G. Denture teeth
H. Implant materials
I. Metal alloys

3. Orthodontic devices and materials.
A. Arch bar splits
B. Bone grafting materials
C. Cresitine
D. Endodontic materials
E. Face bow head gear
F. Gor-tex grafting materials
G. Gutta percha points
H. Muscosal grafts (natural and artificial)
I. Orthodontic appliances
J. Orthodontic brackets
K. Orthodontic elastics
L. Orthodontic expansion screw
M. Orthodontic resins
N. Orthodontic separators
O. Orthodontic waxes
P. Orthodontic wires
Q. Root canal sealants
R. Silver points
S. Surgical wires

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

1. These specific items are—
A. Ambulatory aides
B. Braille writers
C. Electronic Braille equipment
D. Hospital beds and accessories
E. Home respiratory equipment and accessories
F. Stairway lifts
G. Wheelchairs, manual and powered

2. If purchased by or on behalf of a person with one (1) or more physical or mental disabilities to enable them to function more independently, the following items are also exempt:
A. Electronic alternative and augmentative communication devices
B. Electronic print enlargers and magnifiers
C. Items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities
D. Reading machines
E. Scooters

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

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

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

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

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

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

12 CSR 10-110.016 Refunds and Credits
(Moved to 12 CSR 10-102.016)

12 CSR 10-110.200 Ingredient or Component Part Exemption, as Defined in Section 144.030, RSMo

PURPOSE: Section 144.030.2(2), RSMo exempts from taxation certain materials, goods, machinery and parts. This rule explains the requirements for this exemption.

(1) In general, purchases of ingredients or component parts are exempt from tax if they blend with the final product and are intended to and do become a part of the finished product. In addition, materials that are consumed in the manufacturing, processing, compounding, mining, producing or fabricating of products intended to be sold ultimately for final use or consumption are exempt from tax.

(2) Definition of Terms.

(A) Component part—a constituent element of a manufactured or fabricated product.

(B) Ingredient—an element in a mixture or compound.

(C) Interacting—means that the materials and component parts or ingredients act upon each other in manufacturing a steel product.

(D) Reacting—means that the materials cause a chemical change in the component parts or ingredients in manufacturing a steel product.

(E) Steel product—the product made entirely of steel resulting from:

1. Smelting and refining molten pig iron, scrap steel or other metals; or

2. Rolling, drawing, casting or alloying steel.

(3) Basic Application of Exemption.

(A) Materials, manufactured goods, machinery, and parts that become a component part or ingredient of new personal property to be sold ultimately for final use or consumption are not subject to tax. Purchases of ingredients or component parts are exempt from tax if they are intended to and do become a part of the finished product. The exemption does not apply to materials that are totally consumed and are not intended to and do not become a part of the final product. In order to qualify for this exemption, the material in question must be intended to remain in the finished product in at least trace amounts for a specific purpose.

(B) Materials, including without limitation, slagging materials and firebrick, which are consumed in the manufacturing process by blending, reacting or interacting with or by becoming, in whole or in part, component parts or ingredients of steel products to be sold ultimately for final use or consumption are exempt from tax.

(C) If any portion of purchased material qualifies as an exempt ingredient or component part, the entire purchase is exempt from tax. The material is exempt even if a significant portion is consumed in the manufacturing process.

(D) Materials purchased to be used as an ingredient or component part to repair existing property does not qualify for these exemptions because the property produced from the repair work does not constitute "new personal property."

(4) Examples.

(A) A toy manufacturer purchases wood, glue, and paint to use in the manufacturing of wooden rocking horses. The purchases of wood, glue and paint are exempt from tax.

(B) A restaurant purchases apple wood to use in the smoking of foods. The restaurant burns the wood in a closed chamber, called a smoker, in which it places the food. The burning wood releases compounds, and small but measurable quantities of the compounds enter and permeate the food. Because a part of the wood, in the form of smoke particles, blends with and remains as part of the finished product, the apple wood may be purchased tax exempt as an ingredient or component part.

(C) An automobile manufacturer purchases wax to wax all automobiles as they leave the manufacturing plant. The wax qualifies as a component part because it is intended to remain with the product.

(D) A steel mill purchases firebrick and various gases to be used in the production of steel. These purchases are exempt.

(E) A steel fabricator purchases welding rods for use in fabricating a product out of steel plates. The welding rods are exempt because they become a component part of new personal property.

AUTHORITY: section 144.270, RSMo 2000. Original rule filed Aug. 30, 2000, effective March 30, 2001. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expired Feb. 23, 2008. Amended: Filed Aug. 14, 2007, effective Feb. 29, 2008.*

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

***The Doe Run Resource Company, d/b/a/ Doe Run Company Smelting Division, et al.**, S.W.2d (Mo. banc 1998). The issue was the taxability of coke used in the processing of lead. The Missouri Supreme Court found the case to be analogous to the facts in **Sipco, Inc v. Director of Revenue**, 875 S.W.2d 539 (Mo. banc 1994). In that case the court held natural gas used in a singer to remove hair from hog carcasses before butchering did not qualify as an ingredient or component part, because no part of the natural gas used in Sipco's singer remained as an essential or necessary element of a finished pork product. The Court in **Sipco** concluded that no part of the natural gas used in Sipco's singer remained as an essential or necessary element of the finished pork product. Accordingly, the purchase was not tax exempt.*

***Spacewalker, Inc., v. Director of Revenue** (AHC 1997). The purchase of shielding gas used in welding was held taxable. The purpose of the shielding gas was to shield the puddle (molten metal) from the atmosphere and not to become mixed with the metal. The AHC referenced the **Al-Tom** decision, which found that if any part of a material is intended and does remain as an essential or necessary element of the finished product, the entire purchase is exempt. Because the shielding gases were present in the finished product, incidentally or accidentally, they were not exempt as component parts. The Missouri Court of Appeals affirmed the decision by the AHC.*

***Concord Publishing House, Inc. d/b/a Cape Mississippi Development, Inc., d/b/a Southeast Missourian v. Director of Revenue** (AHC 1995). The taxpayer, a newspaper publisher and printer, claimed an ingredient or component part exemption on its toner. The AHC held that the toner and toner cartridges did not qualify for exemption because the toner became a component part of the layout from which the photonegative was developed. The toner was not physically present in the newspaper sold to the public.*

***Robertson's Creative Photography**, (AHC 1994). The Commission held that the taxpayer as a commercial photographer was subject to sales tax on its purchases of film. The film was not a component part or ingredient because it did not remain as an essential or necessary element of the finished product.*

12 CSR 10-110.201 Materials and Other Goods Used or Consumed in Manufacturing, as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo, exempts from state tax and local use tax, but not local sales tax certain materials, goods, machinery and parts. This rule explains the requirements for this exemption.

(1) In general, purchases of electricity, gas (natural, artificial, or propane), water, coal, and energy sources, chemicals, machinery, equipment and materials that are used or consumed in the manufacturing, processing, compounding, mining or producing a product are exempt from state tax and local use tax, but not local sales tax. Local sales tax applies to these transactions.

(2) Basic Application of Exemption.

(A) Electricity, gas (natural, artificial, or propane), water, coal, and energy sources, chemicals, machinery, equipment and materials that are used or consumed in manufacturing, processing, compounding, mining or producing a product are exempt from state tax and local use tax, but not local sales tax. It is not necessary for the item purchased to be used directly in manufacturing, processing, compounding, mining or producing a product in order to qualify for the exemption.

(3) Examples.

(A) A toy manufacturer purchases sandpaper to use in the manufacturing of wooden rocking horses. The purchase of sandpaper is exempt from state tax and local use tax, but not local sales tax because it is a material that is consumed in producing a product.

(B) An automobile manufacturer purchases soap to wash all automobiles as they leave the manufacturing plant. The soap qualifies as a material used or consumed in manufacturing and is exempt from state tax and local use tax, but not local sales tax.

(C) A steel fabricator purchases gases for use in fabricating a product out of steel plates. The gases that are consumed in the fabrication process are exempt from state tax and local use tax, but not local sales tax, because they are consumed in producing a product.

(D) A foundry creates a steel product by casting molten steel. After casting, a cleaning solution is poured over the product to remove impurities from the surface. The solution is used or consumed in the producing of a product and is exempt from state tax and local use tax, but not local sales tax.

(E) A metal container manufacturer purchases coolants, hydraulic fluids, greases and oils for use in machines that are used to shape the product. Catalysts and acids are also purchased to interact with and clean the product being manufactured. The coolants, hydraulic fluids, greases, oils, catalysts and acids are exempt from state tax and local use tax, but not local sales tax.

AUTHORITY: section 144.270, RSMo 2000. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expired Feb. 23, 2008. Original rule filed Aug. 14, 2007, effective March 30, 2008.*

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

12 CSR 10-110.210 Television and Radio Broadcasters

PURPOSE: This rule explains the television and radio broadcasters sales tax exemption.

(1) In general, radio and television broadcasters are exempt from sales and use tax, both state and local, on purchases of utilities, machinery, and equipment used or consumed directly in the broadcasting of their programs.

(2) Definition of Terms.

(A) Broadcaster—An entity who transmits (a radio or television signal) over the airwaves for public or general use. A cable or satellite provider is not a broadcaster.

(3) Basic Application.

(A) A Missouri radio or television station purchases utilities, machinery and equipment for use directly in the broadcasting of their programming. The purchase of the utilities, machinery and equipment are not subject to state or local tax.

AUTHORITY: section 144.270, RSMo 2000 and section 144.054, RSMo Supp. 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expired Feb. 23, 2008. Original rule filed Aug. 14, 2007, effective Feb. 29, 2008.*

**Original authority: 144.054, RSMo 2007 and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-110.220 Hotels and Motels

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

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

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

(3) Basic Application of the Tax.

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

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

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

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

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

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

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

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

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

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

(4) Examples.

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

(B) A hotel provides a complimentary room for a couple's wedding night. The hotel includes a free bottle of champagne and a free breakfast. The hotel must pay tax on the cost of the champagne and the breakfast because the hotel did not charge for the room.

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

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

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

***Drury Supply Co., et al v. Director of Revenue**, (A.H.C. 1996). The Commission found that the "sale for resale" exclusion applies to the sale of a taxable service and, therefore, the purchases of the tangible personal property used to provide "free" breakfasts and the guest consumables were not subject to Missouri taxes. It further found that the guest room supplies (towels, bed linens, waste baskets and other items placed in the rooms for the guests' use) were property used and consumed by the hotel/motel to provide the service to the guests and ownership of the property was not transferred to the guests. Therefore, the purchases of the guest room supplies were subject to tax. The Commission also found that the taxpayer had accepted exemption certificates from exempt entities in good faith. Therefore the sales of room services to persons representing the exempt entities were exempt from tax even though payment did not come directly from the exempt entities. Finally, the Commission found that the taxpayer's charge to the customer for telecommunications services was taxable.*

***HBE Corp. v. Director of Revenue**, (A.H.C. 1992). The hotel marked up the charges for guest phone calls over the rate paid to its supplier. The Commission ruled the hotel "sold" telephone services to "others," its hotel guests. Where a retail sale occurs between a Missouri buyer and Missouri seller, the exemption for interstate commerce does not apply. See, Bratton Corp. v. Director of Revenue, 783 S.W.2d 891 (Mo banc 1990). Even though the sale involved the transmission of telephone message to a recipient located in another state, it was not exempt as a sale in commerce.*

***The Hotel Majestic (Majestic Associates) v. Director of Revenue**, (A.H.C. 1989). A Missouri limited partnership that owned and operated a hotel was properly denied a sales tax refund on certain payments it received under a long-term room reservation rental agreement. The hotel agreed to reserve between 10 and 20 rooms per day for the use and convenience of a public utility. Any reserved room that was not taken by a guest of the utility prior to 6:00 p.m. daily could be let by the hotel to the general public for that night. In exchange for making reserved rooms available, the utility agreed to pay for all the rooms on a monthly basis, whether it used them or not, with the exception of reserved rooms let to other patrons.*

***National Land Management, Inc., v. Director of Revenue**, (A.H.C. 1984). The Commission found that receipts from time sharing arrangements at resorts are not taxable. The payments in question did not constitute charges for rooms furnished in any hotel, motel, inn, tourist camp or tourist cabin. Because the time-shares include a thirty-year lease, the occupants are not transitory in the sense that travelers or tourists are. Rooms in taxpayer's resort are not regularly rented because they are only open to the general public when they are not already reserved.*

***Chase Hotel, Inc, v. Director of Revenue**, (A.H.C. 1982). The taxpayer's purchase of furnishings for use in its hotel was not a "sale for resale" because the hotel was the ultimate consumer of the materials purchased for its renovation program.*

12 CSR 10-110.300 Common Carriers

PURPOSE: Sections 144.030.2(3), (10), (11), (20) and (30), RSMo, exempt from taxation certain materials, parts and equipment used by common carriers. This rule explains what qualifies for the exemptions.

(1) In general, materials, replacement parts, and equipment purchased for use directly upon, and for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property are not subject to tax. Pumping machinery and equipment used to propel products delivered by pipelines engaged as common carriers are not subject to tax. Railroad rolling stock used in transporting persons or property in interstate commerce is not subject to tax. Motor vehicles licensed for a gross weight of twenty-four thousand (24,000) pounds or trailers used by common carriers in the transportation of persons or property are not subject to tax.

(2) Definition of Terms.

(A) Common carrier—any person that holds itself out to the public as engaging in the transportation of passengers or property for hire. A common carrier is required by law to transport passengers or property for others without refusal if the fare or charge is paid. To qualify as a common carrier, a carrier must be registered as a common carrier with all agencies that require such registration, such as the United States Department of Transportation.

(B) Contract carrier—any person under individual contracts or agreements that engages in transportation of passengers or property for hire or compensation. A contract carrier is a carrier that meets the special needs of certain customers to transport its passengers or property.

(C) Directly upon—used in a direct manner without anything intervening and with a certain degree of physical immediacy.

(D) Motor vehicle—any vehicle, truck, truck-tractor, motor bus, or any self-propelled vehicle and trailers or semi-trailers used upon the highways of the state in transportation of property or passengers.

(E) Private carrier—any person engaged in the transportation of passengers or its property, but not as a common carrier or a contract carrier.

(F) Watercraft—any boat or craft, including a vessel, used or capable of being used as a means of transport on waters.

(3) Basic Application of Exemption.

(A) Railroad Rolling Stock. Sales of railroad rolling stock are exempt provided that it is used in transporting persons or property in interstate commerce. The sale of flanged wheel equipment used to repair and maintain the railroad track used in interstate commerce is also exempt. Railroad rolling stock for use solely in intrastate commerce is not exempt.

(B) Aircraft. Sales of aircraft to common carriers for storage or for use in interstate commerce are not subject to sales tax.

(C) Pipeline Pumping Equipment. 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 private carriers. All other machinery and equipment such as pipelines, connecting lines, communication equipment, monitoring equipment, accessory equipment, such as fuel tanks to provide fuel for pumping engines, and manifolds used to connect pumping equipment to the main lines are subject to tax.

(D) Power Take-Off Units. Equipment on motor vehicles used by common carriers which is exempt from 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 the power take-off units.

(E) Materials. Materials used by common carriers directly upon and for the maintenance or repair of motor vehicles, watercraft, railroad rolling stock or aircraft, which qualify for the exemption from tax include, but are not limited to, grease, motor oil, gear oil and lube, water additives, antifreeze, fuel additives, cleaners and paint for body work.

(F) Replacement Parts. Replacement parts used by common carriers directly upon and for the maintenance or repair of motor vehicles, watercraft, railroad rolling stock or aircraft, which qualify for the exemption from tax include, but are not limited to, decals, permit pouches, tarpaulins and tie-downs, wind deflectors, winter fronts, and radio repair parts purchased for use on the vehicle.

(G) Barges. The purchase of barges used primarily in the transportation of property or cargo on interstate waterways is exempt from tax.

(H) Tools. Tools and equipment purchased for use directly upon, and for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property are not subject to tax.

(4) Examples.

(A) A manufacturer registered as a common carrier maintains a fleet of trucks to transport finished products to various distribution centers throughout the United States. The manufacturer advertises that it will transport goods belonging to others on return trips from the distribution centers and advertises that service. The purchase of the manufacturer's fleet of trucks and repair parts for the fleet are not taxable.

(B) A manufacturer maintains a fleet of trucks to transport finished products to various distribution centers throughout the United States. The manufacturer also negotiates with other companies to transport goods on return trips from the distribution centers. The purchase of the manufacturer's fleet of trucks and repair parts for the fleet are taxable because the manufacturer is not a common carrier.

(C) A common carrier purchases a cab and chassis. The cab and chassis are licensed for a gross weight of 24,000 pounds and will be used only in intrastate commerce as a common carrier. The purchase of the cab and chassis is not taxable. The common carrier subsequently purchases a dump bed to add to the cab and chassis. The dump bed is exempt from tax because it is materials or equipment used in the manufacture of a motor vehicle to be used by a common carrier.

(D) The sale of a switch engine to be used to move railroad cars around a switching yard, if part of an interstate rail system, is not subject to tax.

(E) A common carrier purchases a trailer. The common carrier subsequently purchases a refrigeration unit to add to the trailer. The refrigeration unit is exempt from tax because it is materials or equipment used in the manufacture of a motor vehicle to be used by a common carrier.

(F) The sale of a switch engine to be used to move railroad cars around a switching yard, if part of an interstate rail system, is not subject to tax.

(G) An airline purchases equipment to test engine parts that have been removed from the plane and brought to their repair facility. The equipment purchased would be exempt from tax.

(H) The owner of a Missouri furniture store is registered as a common carrier, but does not hold itself out to the general public as a common carrier. It uses its truck only to deliver furniture sold to customers residing in and outside Missouri. The owner installs new brakes on the truck. Even though the owner is registered as a common carrier, the brakes are taxable because the furniture store is operating as a private carrier.

(I) A charter company contracts with private groups for exclusive use of its bus and driver for transportation between Missouri and destinations in the Southeastern United States. The company provides no other transportation services. The charter company purchases new tires. The tires are taxable because the business is a contract carrier.

(J) A railroad purchases a flanged wheel mechanized tie replacement machine for repairing broken rail segments on an interstate system. The purchase of the machine is exempt.

AUTHORITY: section 144.270, RSMo 2000 and section 144.030, RSMo Supp. 2007. Original rule filed Jan. 24, 2001, effective Aug. 30, 2001. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expired Feb. 23, 2008. Amended: Filed Aug. 14, 2007, effective Feb. 29, 2008.*

**Original authority: 144.030, RSMo 1939, amended 1941, 1943, 1945, 1949, 1961, 1965, 1967, 1969, 1977, 1979, 1980, 1982, 1983, 1985, 1986, 1988, 1989, 1991, 1994, 1995, 1996, 1997, 1998, 1999, 2003, 2004, 2005, 2007 and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

***Burlington Northern Railroad v. Director of Revenue**, 785 S.W.2d 272 (Mo. banc 1990). Railroad rolling stock normally has flanged wheels. The equipment does not have to be used directly in transporting persons or property in interstate commerce. Thus, this flange wheeled equipment used to repair and maintain the track was held exempt.*

***Trailiner Corp. v. Director of Revenue**, 783 S.W.2d 917 (Mo. banc 1990). The court held that the trailers constituted "motor vehicles" within the meaning of 144.030.2(3). The court relied on the definition of motor vehicle found in chapter 390, RSMo, rather than chapter 301, RSMo, as argued by the director.*

***Hogan Motor Leasing, Inc. v. Director of Revenue** (AHC 1999), **Hogan Transports, Inc. v. Director of Revenue** (AHC 1999). The taxpayer purchased equipment that allowed the taxpayer to monitor the maintenance needs of its trucks, which were used to transport goods in interstate commerce. The equipment also permitted certain communications functions between the truck and dispatchers. The communications functions were implemented first. The commission held that the maintenance functions of the equipment made it equipment that was purchased for use directly upon and for the repair and maintenance of the trucks and therefore, exempt. Furthermore, the original purchase was exempt because the evidence established that the taxpayer intended when it purchased the equipment to add the maintenance functions after implementation of the communications functions was complete.*

***Craftsmen Limousine, Inc. v. Director of Revenue** (AHC 1997). After providing definitions for common, contract and private carriers, the commission found that the taxpayer's customers (limousine services) could be any of the three. Because the taxpayer did not prove that its customers were common carriers it was not entitled to the exemption.*

Rocky Mountain Helicopters, Inc. v. Director of Revenue *(AHC 1992). Pursuant to contracts with Missouri hospitals, taxpayer operated an air ambulance service which picked up and transported patients to the hospital. A common carrier must convey passengers or freight without refusal if the approved fare is paid. Assuming a carrier carries passengers or freight without refusal, the crucial test is whether the carrier holds itself out as a common carrier. Thus, a carrier may be a common carrier even if it limits its operations to special contract or charter flights. Because the taxpayer held itself out as a common carrier, through promotional material and use of its insignia and placard on the aircraft, and carried, within the limits of its capacity, all persons desiring its services, it was found to be a common carrier.*

St. Louis Refrigerator Car Co. v. Director of Revenue *(AHC 1992). Items purchased for either repair or maintenance may qualify for the exemption. Use of the phrase "directly upon" does not relate to the relationship between the item and the repair or maintenance process. In this way "directly upon" in section 144.030.2(3), RSMo, is distinguishable from "used directly for" in section 144.030.2(4), RSMo. "Directly upon" indicates the close physical relationship required between the item and the mode of transportation. While physical contact is not required, there must be a certain degree of physical immediacy.*

Metro Crown International, Inc. v. Director of Revenue *(AHC 1990). Exemption certificates must be provided as evidence for a common carrier's claim of exemption.*

Trans World Airlines, Inc. v. Director of Revenue *(AHC 1988). Cleaners, abrasives, solvents and test equipment qualified for the section 144.030.2(3), RSMo, exemption even though they were used on parts of the aircraft that were removed for servicing. Cleaning soaps used to clean the floor of the repair facility were not used "directly upon" the aircraft and, therefore, not exempt.*

Emerson Electric Co. v. Director of Revenue*, 133 S.W.3d 31 (Mo. banc 2004). A common carrier does not have to use an aircraft as part of its common carrier operations to qualify to purchase the aircraft exempt from tax. "Mere storage or use of the plane in interstate commerce qualifies the common carrier for the exemption."*

12 CSR 10-110.400 Newspapers and Other Publications

PURPOSE: This rule explains the application of sales and use tax law to the publication and sale of newspapers and other publications. Additionally, section 144.030.2(8), RSMo exempts from taxation newsprint, ink, computers, photosensitive paper and film, toner, printing plates and other machinery, equipment, replacement parts and supplies used in producing newspapers published for dissemination of news to the general public. This rule explains what elements must be met in order to qualify for this exemption. The sale of publications that are not in tangible form is not subject to tax and is not addressed in this rule.

(1) In general, newspapers, magazines, newsletters, periodicals, trade journals, books and other publications are tangible personal property and their sale is subject to tax to the same extent as any other personal property. Sellers of printed materials are subject to all rules applicable to other sellers of tangible personal property, except as otherwise specifically provided in this rule. Machinery, equipment, replacement parts, and supplies used to produce newspapers for dissemination of news to the general public are exempt from tax. Publishers of other printed materials are not included within the same exemption as newspapers that disseminate news to the general public but may qualify for exemptions applicable to manufacturers to the same extent as any other manufacturer.

(2) Definition of Terms.

(A) Equipment—devices that have a degree of permanence to the business, contribute to multiple processing cycles over time and generally constitute fixed assets, other than land and buildings, that are capitalized and depreciated for purposes of business and accounting practices.

(B) Machinery—combinations of parts that work together as a functioning unit, even if they are subordinate elements of more complex machinery. Machinery may be simple or complex, but does not include the replacement of an individual part, even if that part becomes an element of a functioning machine.

(C) Newspapers published for the dissemination of news to the general public—publications that are published at stated short intervals, usually daily or weekly, and contain news of current events available for distribution to anyone; that do not, when successive issues are put together, constitute a book; and that are generally in sheet form.

(D) Parts—articles of tangible personal property that are components of machinery or equipment, which can be separated from the machinery or equipment and replaced. Like machinery and equipment, parts must have a degree of permanence and durability. Items that are consumed in a single processing and benefit only one (1) production cycle are materials and supplies, not parts. Items such as: nuts, bolts, hoses, hose clamps, chains, belts, gears, drill bits, grinding heads, blades, and bearings, would ordinarily be considered parts. Substances such as fuels and coolants that are added to machinery and equipment for operation are not parts. Substances such as lubricants, paint and adhesives that adhere to the surface of machinery and equipment but are not distinct articles of tangible personal property, are not parts; these items would be considered materials or supplies within the meaning of the exemptions.

(E) Producing—for purposes of this rule only, the process of creating a newspaper.

(F) Publisher—a person who prepares and issues a publication for public distribution.

(G) Publication—any written material, such as newspapers, magazines, newsletters, periodicals, trade journals, and books, offered for sale or distribution.

(H) Supplies—for purposes of this rule only, tangible personal property consumed in the production of a newspaper. The term supplies does not include fuel.

(3) Basic Application of Exemption.

(A) If the retail purchaser buys a publication directly from the publisher or the publisher bears the risk of loss for noncollection, the publisher is the seller and must collect and remit the tax. If the retail purchaser buys the publication from someone other than the publisher and that person bears the risk of loss for noncollection, then that person is the seller and must collect and remit the tax.

(B) If the purchaser receives the publication in Missouri, the seller must collect and remit sales tax, unless the order for the publication is approved outside Missouri and delivered to the purchaser from outside Missouri by common or contract carrier, in which case the seller must collect and remit use tax.

(C) The sale of a publication subject to state sales tax is subject to the local sales tax at the rate in effect at the seller's place of business in Missouri. A sale of a publication subject to state use tax is subject to the local use tax in effect where the publication is first delivered in Missouri.

(D) The sale by the publisher of a publication through a vending machine is subject to tax based on one hundred thirty-five percent (135%) of the average price at which the publisher sells the publication to vendors or on actual gross receipts. The sale of a publication through a vending machine is subject to

local sales tax at the rate in effect where the vending machine is located.

(E) If the purchaser is required to pay for delivery, handling, postage costs or similar service charges as part of the sale price of the publication, the entire sale price is subject to tax. If the purchaser is not required to pay the service charge as part of the sale price of the publication, the amount paid for the service is not subject to tax if the charge for such service is separately stated. If the charge for the service is not separately stated, the entire sale price is subject to tax.

(F) A publisher may set the individual copy price to a round amount including tax, provided that the publication states somewhere that the amount of the price includes tax. Any other seller must collect and remit tax on the sale price of the publication.

(G) A publisher may purchase an insert to its publication exempt from tax as an ingredient or component part. See 12 CSR 10-110.200.

(4) Examples.

(A) An individual in Missouri subscribes to the local newspaper by contracting with the publisher. The publisher contracts with a third party to deliver the newspaper and collect the entire cost of the newspaper, including delivery charges, which are not separately stated. The publisher bears the risk that the individual will not pay for the subscription. The publisher is the seller and must collect and remit sales tax, including local sales tax at the rate in effect at the publisher's place of business. Tax is imposed on the entire sale price, including delivery charges, because the delivery charges are not separately stated. The publisher may set the price at a round amount, including tax, as long as the publication states somewhere that the price includes tax.

(B) An individual in Missouri subscribes to an out-of-state newspaper by contracting with a Missouri newspaper carrier, which is the only way to obtain this newspaper in Missouri. The carrier bears the risk that the individual will not pay for the subscription. The carrier is the seller and must collect and remit sales tax, including local sales tax at the rate in effect at the carrier's place of business. Tax is imposed on the entire sale price, including delivery charges, because the delivery charges must be paid to receive the newspaper.

(C) An individual in Missouri subscribes to an out-of-state newspaper by contracting with the out-of-state publisher that has nexus with Missouri. The publisher delivers the newspaper by mail, which is the only way to obtain the newspaper in Missouri. The publisher does not have a place of business in Missouri. The publisher is the seller and must collect and remit use tax, including local use tax at the rate in effect where the newspaper is delivered. Tax is imposed on the entire sale price, including postage and handling charges.

(D) A retailer sells local and national publications. The retailer is the seller of the publications and must collect and remit sales tax, including local sales tax at the rate in effect at the retailer's place of business. The retailer may claim a resale exemption when purchasing the publications from the publishers.

(E) A publisher prints a daily newspaper and occasionally prints extra copies for free distribution to nonsubscribers. The publisher should not remit tax on the copies distributed for free and the supplies used to produce the newspaper are exempt.

(F) Publisher A prints and sells a newspaper to publisher B. Publisher B distributes the newspaper for free. Publisher A should collect and remit tax on its sales to publisher B.

(G) Same facts as (4)(F), except publisher B sells the newspaper. Publisher B must collect and remit tax on its sale of the newspaper, but may issue a resale exemption certificate and purchase the newspaper from publisher A exempt from tax.

(H) A publisher produces an advertising circular that it distributes for free. The publisher should pay tax on the machinery, equipment and supplies used to produce the circular.

(I) Same facts as (4)(H), except the publisher sells the circular. The publisher must collect and remit tax on its sales of the circular. The machinery and equipment used to produce, and the ingredients or component parts incorporated in, the circular are exempt from tax when purchased because the publisher is manufacturing a product sold at retail.

AUTHORITY: sections 144.270 and 144.705, RSMo 2000. Original rule filed Dec. 1, 2004, effective July 30, 2005.*

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

Hearst Corp. v. Director of Revenue, *779 S.W.2d 557 (Mo. banc 1990). Newpapers are tangible personal property subject to sales tax.*

Daily Record Co. v. Ray James, *629 S.W.2d 348 (Mo. banc 1982). Newspaper inserts are component parts of the newspaper and exempt from tax on the purchase.*

In ***James v. Mars Enders, Inc****., 629 S.W.2d 331 (Mo. banc 1982), the Supreme Court extended the holding in* ***Daily Record*** *to supplements printed by a third party printer and delivered to a newspaper publisher for distribution with the newspaper.*

12 CSR 10-110.600 Electrical Energy, as Defined in Section 144.030, RSMo

PURPOSE: *Section 144.030.2(12), RSMo exempts from tax certain purchases of electrical energy used in primary or secondary manufacturing, processing, compounding, mining or producing a product, or processing of raw materials that contain recovered materials. Section 144.030.2(31), RSMo exempts from tax electricity used in connection with the manufacturing of cellular glass products or in any material recovery processing plant. Section 144.030.2(33), RSMo exempts from tax utilities used or consumed directly or exclusively in the research and development of agricultural biotechnology products and plant genomics products and prescription pharmaceuticals consumed by humans or animals. This rule explains when these exemptions apply and how a taxpayer may claim the exemptions at the time of purchase of the electrical energy.*

(1) In general, electrical energy used in facilities owned or leased by the taxpayer in the actual primary manufacturing, processing, compounding, mining or producing of a product is exempt from tax if the cost of the electrical energy used exceeds ten percent (10%) of the total cost of the primary manufacturing, processing, compounding, mining or producing, exclusive of the cost of electrical energy so used. Electrical energy used in facilities owned or leased by the taxpayer in the actual secondary manufacturing, processing, compounding, mining or producing of a product is exempt from tax if the cost of the electrical energy used exceeds ten percent (10%) of the total cost of the secondary manufacturing, processing, compounding, mining or producing, exclusive of the cost of electrical energy so used. Electrical energy used in a material recovery processing plant owned or leased by the taxpayer or in manufacturing cellular glass products is exempt from tax. Utilities used or consumed directly or exclusively in the research and development of agricultural biotechnology products and plant genomics products and prescription pharmaceuticals consumed by humans or animals are exempt from tax. Electrical energy used in facilities owned or leased by the taxpayer in processing raw materials that contain at least twenty-five percent (25%) recovered materials is exempt from tax.

(2) Definition of Terms.

(A) Compounding—Producing a product by combining two (2) or more ingredients or parts.

(B) Fabrication—See 12 CSR 10-111.010.

(C) Manufacturing—See 12 CSR 10-111.010.

(D) Material recovery processing plant—See 12 CSR 10-111.060.

(E) Mining—See 12 CSR 10-111.010.

(F) Primary processing—Manufacturing, processing, compounding, mining or producing that results in the first marketable product.

(G) Producing—See 12 CSR 10-111.010.

(H) Product—An item with a new identity, use and market value produced by the taxpayer's efforts which is intended at the time of the production activity to be sold ultimately for final use or consumption. A product may be tangible personal property or a service, if the property or service is subject to state or local sales or use taxes, or any tax that is substantially equivalent thereto, in this state or any other state.

(I) Production activity—Manufacturing, processing, compounding, mining, producing or fabricating.

(J) Raw material—any ingredient or component that becomes part of, or is made into a finished product.

(K) Recovered materials—See 12 CSR 10-111.060. In order for an item to be a recovered material, a facility must recover it from the solid waste stream. An item used in processing for its original intended purpose is not a recovered material.

(L) Secondary processing—Further processing or fabricating of a marketable product that results in another marketable product.

(M) Solid waste—See 12 CSR 10-111.060.

(N) Total cost—All allocated costs incurred in producing the product, including all elements of production cost in accordance with generally accepted accounting principles.

(3) Basic Application of Exemption.

(A) A taxpayer may claim this exemption at the time of purchase of the electrical energy by presenting the seller with a direct pay certificate issued by the department. In order to obtain a direct pay certificate, the taxpayer must submit an electrical energy direct pay authorization application. The application must demonstrate, by the use of the previous calendar year's data, a probable entitlement to the electrical energy exemption for the coming year. The taxpayer must file and remit the appropriate tax on energy purchases that do not qualify for this exemption on its sales tax return.

(B) Every transformation of materials does not constitute a separate production activity. In order to be a separate production activity, the activity must create a new marketable product. If a taxpayer produces only one (1) marketable product, there can only be primary production activity. All production costs must be included in calculating the total cost of production. Secondary production activity can only exist when an already marketable product produced by the taxpayer undergoes subsequent production activity that produces a second marketable product. When there is secondary production activity, the production costs attributable to the primary production activity are not included in the total cost of production of the secondary production activity.

(4) Examples.

(A) A manufacturing firm produces extruded sheet plastic. The automated production line is a closed system connected together by use of vacuum feed-pipe. When an order is received, the computer controlled production line first blends the necessary raw materials. After blending, the mix is conveyed through vacuum pipe to be dried, and then to the extruder, where the mix is heated to meltdown and rolled into sheets by the extruder rollers. These sheets are the end product. The cost of raw materials is 95% of the total cost of producing the end product. The cost of electrical energy is 99% of the cost of drying and extruding the blended raw materials. The plastic sheet is the only marketable product produced by this continuous, indivisible operation. Because the cost of electricity does not exceed 10% of the total cost of producing the product, the purchase of the electricity does not qualify for the exemption.

(B) A manufacturer produces glass bottles to be used as packaging. The manufacturer combines raw materials, including recycled glass obtained from recyclers, which is then melted under extreme heat. The molten glass is then formed into bottles, which are the manufacturer's only product. The electrical energy costs exceed 10% of the total cost of production; therefore the manufacturer qualifies for the exemption. If the manufacturer's raw materials include at least 25% recovered material, the manufacturer may avoid the time and cost involved in the calculations necessary to support the exemption under the 10% threshold and claim the exemption based on its use of recovered materials.

(C) A business contracts with manufacturers of frozen food products to receive fresh or partially frozen food products, reduce the temperature to zero degrees or below, and release the fully frozen food product back to the manufacturer for distribution. The frozen food products that the business produces have a new and different identity from the fresh or partially frozen products that it receives. Frozen foods have a longer shelf life and a broader distribution system than refrigerated foods. The business qualifies for the exemption if the electricity used in the freezing process exceeds 10% of the cost of producing the fully frozen food products from the fresh or partially frozen food products. The business does not have to include the cost of its customer's production of the fresh or partially frozen products because the fresh or partially frozen food is a separate marketable product from the frozen food.

(D) A frozen food manufacturer uses $100,000 of electricity in manufacturing its products. The manufacturer also uses $150,000 of electricity in its on-premises, refrigerated warehouse to maintain its products at the necessary temperature prior to shipping. Total cost of producing the products, excluding electricity, is $2,000,000. The combined electricity cost of $250,000 exceeds 10% of the $2,000,000 cost of production. The manufacturer qualifies for the exemption because processing includes any treatment by the producer at the production facility that is necessary to maintain the product.

(E) A paper manufacturer uses recycled paper in its primary processing of producing rolls of newsprint. The newsprint includes 50% recovered paper, qualifying the manufacturer for the electrical energy exemption from state and local taxes. The newsprint is subsequently cut into sheets during secondary processing for sale to a book printer. The cost of electricity used during the secondary processing does not exceed 10% of the total cost of producing the cut sheets. However, the electrical energy used to produce the final product is also exempt because the secondary process uses at least 25% recovered materials.

AUTHORITY: section 144.270, RSMo 2000. Original rule filed July 25, 2001, effective Feb. 28, 2002. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expired Feb. 23, 2008. Amended: Filed Aug. 14, 2007, effective Feb. 29, 2008.*

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

***Mid America Dairymen, Inc. v. Director of Revenue,** 924 S.W.2d 280 (Mo. banc 1996). Processing consists of the alteration or physical change of an object or material that produces an article with a use, identity and*

market value different from the use, identity and market value of the original. The primary product need not actually be marketed, as long as it is marketable. It is incumbent on the taxpayer to prove the existence of a market. If there is not a market for all of the output, the taxpayer may not claim secondary processing exists for the portion of the output for which there is no market. When a taxpayer produces only one marketable product, there can only be primary processing. Secondary processing exists only when there is a second marketable product that results from further processing of an already marketable product. Assuming production stages can properly be split into primary and secondary, a taxpayer may allocate its total production costs accordingly.

***Hudson Foods, Inc. v. Director of Revenue**, 924 S.W.2d 277 (Mo. banc 1996). The taxpayer received live poultry. After the poultry was killed and dressed it was chilled (temperature reduced to 40°), crusted (temperature reduced to 28°) or frozen solid. The court held that chilling, crusting and freezing were all processing. The taxpayer did not merely maintain a temperature, but actually reduced the temperature to decrease spoilage and extend shelf life.*

***McKinley Iron v. Director of Revenue,** 888 S.W.2d 705 (Mo. banc 1994). The taxpayer operated a scrap metal processing plant that processed raw scrap metal into densified scrap metal. Approximately 10-20% of the raw scrap metal was marketable after the initial processing. The remainder was processed further before sale. The court found that densified scrap metal was the only product produced by the taxpayer. Even though the initial processing enhanced the value and marketability of the scrap metal, it was not a separate process. The court also held that "total cost of production" is all-inclusive and the cost of materials must be included. [Note: In 1998, the exemption was expanded to include a material recovery processing plant that uses more than 25% recovered materials.]*

***Wetterau, Inc. v. Director of Revenue,** 843 S.W.2d 365 (Mo. banc 1992). The taxpayer stored and maintained frozen and refrigerated foods as a business. The court held maintaining food in a frozen state is not processing.*

***Union Electric Co. v. Goldberg,** 578 S.W.2d 921 (Mo. banc 1979). The taxpayer mined and processed ore. The total cost of electricity used in the combined operations did not exceed 10% of the total cost of production. However, the total cost of electricity used in the processing did exceed 10% of the total cost of the processing. The court held that the taxpayer was engaged in primary mining and secondary processing, and was entitled to the exemption for the electricity used in the processing.*

***Bridgeton Refrigerated Warehouse v. Director of Revenue** (AHC 1998). The taxpayer contracted with manufacturers of frozen food products to receive the products, reduce the temperature to zero degrees or below, and releases the product back to the manufacturer for distribution. The Commission held that freezing the food constituted secondary processing.*

***NF Properties L.P. v. Director of Revenue** (AHC 1997). The taxpayer leased a refrigerated warehouse to a meat distributor. The distributor processed the meat into frozen meat patties. The Commission held that the refrigeration provided by the taxpayer to the distributor was not a marketable product and the taxpayer was not entitled to the exemption.*

***Hazelwood Farms Bakeries, Inc. v. Director of Revenue (AHC 1994).** The taxpayer was a commercial baker. Typically, the taxpayer mixed the ingredients of products and froze the mixture. The taxpayer would ship the products to its customers, which baked and sold them. The Commission found that the products were marketable before freezing and that the frozen product had a use, identity and market value different from the unfrozen products. Therefore, the taxpayer was entitled to the exemption for electricity used in the secondary process of freezing the products, which exceeded 10% of the total cost of the freezing process.*

12 CSR 10-110.601 Electrical, Other Energy and Water as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo, exempts from state tax and local use tax, but not local sales tax, electricity, gas (natural, artificial, or propane), water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing, processing, compounding, mining or producing any product or in the processing of recovered materials. This rule explains when this exemption applies and how a taxpayer may claim the exemption at the time of purchase.

(1) In general, purchases of electricity, gas (natural, artificial, or propane), water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing, processing, compounding, mining or producing any product are exempt from state tax and local use tax, but not local sales tax.

(2) Definition of Terms.

(A) Compounding—Producing a product by combining two (2) or more ingredients or parts.

(B) Energy source—Those resources, such as petroleum, coal, gas, wind, steam, nuclear fuel and sunlight, from which energy is produced.

(C) Fabrication—See 12 CSR 10-111.010.

(D) Manufacturing—See 12 CSR 10-111.010.

(E) Material recovery processing plant—See 12 CSR 10-111.060.

(F) Mining—See 12 CSR 10-111.010.

(G) Producing—See 12 CSR 10-111.010.

(H) Recovered materials—See 12 CSR 10-111.060.

(3) Basic Application of Exemption.

(A) A taxpayer may claim the exemption for state tax and local use tax, but not local sales tax at the time of purchase. A taxpayer may not claim an exemption from local tax and then remit the tax directly to the department. It is the seller's responsibility to collect and remit the proper amount of local tax to the department.

(B) Purchases reported to the department under direct pay and Electrical Energy Direct Pay (EEDP) are exempt from the application of subsection (3)(A) of this rule.

(C) The energy source and water that is subject to this exemption is not required to be directly used in the process for which the exemption is being claimed. There is also no requirement that the energy source and water comprise ten percent (10%) of the cost of a primary or secondary production process in order to qualify for this exemption. There is also no requirement that twenty-five percent (25%) of the raw materials be recycled in order for the purchaser to claim this exemption.

(4) Method of Collection and Apportionment

(A) Energy and water vendors are responsible for remitting tax to the department. Purchasers are responsible for informing energy vendors on the MO-149 (Sales/Use Tax Exemption Certificate) of the percentage of

energy used for activities exempt under section 144.054, RSMo. The purchaser may use any reasonable method to calculate this percentage, such as square footage or reference to a use analysis. The exemption will be applied as follows:

Purchaser's Calculated Exempt Percentage	Percentage Exempt
76–100	100
51–75	75
26–50	50
1–25	25
0	0

(B) Beginning on August 28, 2007 and ending on January 31, 2008, any vendor who receives an exemption certificate exempting sales of electricity, gas (natural, artificial, or propane), water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing, processing, compounding, mining or producing any product after the bill was issued may take the correction as an adjustment on its sales tax return provided the net result is not a negative figure. In the event an exemption certificate is received after January 31, 2008, and an exemption was due and not properly applied by the vendor, the vendor may submit a refund request to the department.

(5) Exempt Examples.

(A) A manufacturer purchases propane to operate forklifts that move raw materials to production lines, move work-in-process between production steps, move finished goods to an on-site storage area, and to load finished goods on trucks for shipment from the plant. The fuel is exempt from state tax and local use tax, but not local sales tax.

(B) A manufacturer uses electricity to run its equipment, maintain a moderate temperature in its production facility and light the plant. The purchase of all of its electricity is exempt from state tax and local use tax, but not local sales tax, because it is used or consumed in producing a product.

(C) A manufacturer uses coal to fuel boilers to generate steam used to manufacture a product. The purchase of the coal is exempt from state tax and local use tax, but not local sales tax, because it is used or consumed in producing a product.

(D) A manufacturer purchases compressed gas used for welding a product. The purchase of the compressed gas is exempt from state tax and local use tax, but not local sales tax because it is used or consumed in producing a product.

(E) A manufacturer uses water to cool a product during the manufacturing process. The water is exempt from state tax and local use tax, but not local sales tax.

(F) A manufacturer preserves its final product in a warehouse located at the production facility awaiting shipment. The purchase of energy to maintain the desired environment and provide lighting is exempt from state tax and local use tax, but not local sales tax.

(G) A construction company that has been deemed a manufacturer purchases fuel to be used in a concrete ready-mix truck. The fuel is subject to motor fuel tax; however if a refund claim is made, the refund will be exempt from state tax and local use tax, but not local sales tax, because the fuel is used in producing a product.

(6) Taxable Examples.

(A) A restaurant preparing food for immediate consumption is not exempt as a manufacturer. Therefore, all state and local taxes apply.

AUTHORITY: section 144.270, RSMo 2000 and 144.054, RSMo Supp. 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expired Feb. 23, 2008. Original rule filed Aug. 14, 2007, effective March 30, 2008.*

**Original authority: 144.054, RSMo 2007; and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-110.621 Application of Sales Tax Exemption as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo, exempts from state sales and use tax and local use tax, but not local sales tax, electricity, gas (natural, artificial, or propane), water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing, processing, compounding, mining or producing any product or in the processing of recovered materials. This rule explains when this exemption applies.

(1) In general, electricity, gas (natural, artificial, or propane), water, coal, and energy sources, chemicals, machinery, equipment, and materials used or consumed in manufacturing, processing, compounding, mining or producing any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing, processing, compounding, mining or producing any product is exempt from state sales and use tax and local use tax, but not local sales tax.

(2) Definition of Terms.

(A) Compounding—See 12 CSR 10-110.601.

(B) Energy source—See 12 CSR 10-110.601.

(C) Fabrication—See 12 CSR 10-111.010.

(D) Manufacturing—See 12 CSR 10-111.010.

(E) Material recovery processing plant—See 12 CSR 10-111.060.

(F) Mining—See 12 CSR 10-111.010.

(G) Producing—See 12 CSR 10-111.010.

(H) Recovered materials—See 12 CSR 10-111.060.

(3) Basic Application of Exemption.

(A) A taxpayer may claim the exemption for state sales and use tax and local use tax, but not local sales tax at the time of purchase. A taxpayer may not claim an exemption from local tax and then remit the tax directly to the department. It is the seller's responsibility to collect and remit the proper amount of local tax to the department.

(4) Exempt Examples.

(A) A manufacturer purchases propane to operate forklifts that move raw materials between production lines. The fuel is exempt from state sales and use tax and local use tax, but not local sales tax.

(B) A manufacturer uses electricity to run its equipment, maintain a moderate temperature in its production facility and to light the interior of the plant. The purchase of all of its electricity is exempt from state sales and use tax and local use tax, but not local sales tax.

(C) A manufacturer uses coal to fuel boilers to generate steam used to manufacture a product. The purchase of the coal is exempt from state sales and use tax and local use tax, but not local sales tax.

(D) A manufacturer purchases compressed gas used for welding a product. The purchase of the compressed gas is exempt from state sales and use tax and local use tax, but not local sales tax.

(E) A manufacturer uses water to cool a product during the manufacturing process. The manufacturer's purchase of water is exempt from state sales and use tax and local use tax, but not local sales tax.

(F) A manufacturer preserves its final

product in a warehouse located at the production facility awaiting shipment. The manufacturer's purchase of energy to maintain the desired temperature and provide lighting inside the warehouse is exempt from state sales and use tax and local use tax, but not local sales tax.

(G) A construction company, who has been deemed a manufacturer, purchases fuel to be used in a concrete ready-mix truck. The manufacturer's purchase of fuel is subject to motor fuel tax, however if a refund claim is made, the refund is exempt from state sales tax, but not local sales tax.

(H) A cabinetmaker creates cabinets or counter tops from raw materials for sale to contractors or customers. The cabinetmaker's purchases of energy sources, chemicals, machinery, equipment, and materials used or consumed in the manufacturing process are exempt from state sales and use tax and local use tax, but not local sales tax on items allowed under section 144.054, RSMo.

(I) A manufacturer builds mobile homes in its factory. The manufacturer's purchases of energy sources, chemicals, machinery, equipment, and materials used or consumed in the manufacturing process are exempt from state sales and use tax and local use tax, but not local sales tax on items allowed under section 144.054, RSMo.

(J) A manufacturer creates pre-fabricated steel and concrete products for sale to the public. The manufacturer's purchases of energy sources, chemicals, machinery, equipment, and materials used or consumed in the manufacturing process are exempt from state sales and use tax and local use tax, but not local sales tax on items allowed under section 144.054, RSMo.

(K) A hobby shop builds a frame to enclose photographs or pictures. The hobby shop's purchases of energy sources, chemicals, machinery, equipment, and materials used or consumed in the manufacturing process of building the frame are exempt from state sales and use tax and local use tax, but not local sales tax on items allowed under section 144.054, RSMo.

(L) A company uses energy to test manufacturing equipment as it is installed. This energy is exempt from state sales and use tax and local use tax, but not local sales tax.

(M) A commercial printer uses energy sources, chemicals, machinery, equipment, and materials in its process. These items are exempt from state sales and use tax and local use tax, but not local sales tax.

(N) A telecommunication company produces a wireless or landline based telephone call. The energy sources, chemicals, machinery, equipment, and materials used by the telecommunication company to manufacture the phone call are exempt from state sales and use tax and local use tax, but not local sales tax.

(O) A bakery creates baked goods for sale directly to the public or through retailers. The energy sources, chemicals, machinery, equipment, and materials used by the bakery are exempt from state sales and use tax and local use tax, but not local sales tax.

(P) A factory purchases safety equipment such as earplugs and goggles for use by the employees on the manufacturing floor. These items used by the employees who are manufacturing a product are exempt from state sales and use tax and local use tax, but not local sales tax.

(5) Taxable Examples.

(A) A restaurant preparing food for immediate consumption is not exempt. Therefore, all state and local taxes apply.

(B) A wireless company operates a customer support call center to assist its customers with questions. The call center is not exempt. Therefore, all state and local taxes apply.

(C) The construction of a road, building, or other fixed structure is not exempt. Therefore, all state and local taxes apply.

(D) The activities of a florist are not exempt. Therefore, all state and local taxes apply.

(E) An auto repair facility repairs vehicles by installing or replacing parts. This is not exempt. Therefore, all state and local taxes apply.

(F) A butcher shop receives a side of beef and cuts it into steaks and hamburger. This is not exempt. Therefore, all state and local taxes apply.

(G) A manufacturer preserves its final product in a warehouse not located at the production facility. The purchase of energy to maintain the desired temperature and provide lighting inside the warehouse is not exempt due to the location of the warehouse. Therefore, all state and local taxes apply.

(H) A cable television provider's purchase of energy is not exempt. Therefore, all state and local taxes apply.

AUTHORITY: section 144.270, RSMo 2000 and section 144.054, RSMo Supp. 2007. Emergency rule filed Oct. 10, 2007, effective Oct. 20, 2007, expired April 16, 2008. Original rule filed Oct. 10, 2007, effective April 30, 2008.*

**Original authority: 144.054, RSMo 2007 and 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

12 CSR 10-110.900 Farm Machinery and Equipment Related Exemptions

PURPOSE: Sections 144.030.2(22), 144.045.1, 144.047, and 144.063, RSMo, exempt certain farm machinery, equipment, repair parts, supplies, lubricants, and fuels from taxation. This rule explains which items qualify for these exemptions.

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

(2) Definition of Terms.

(A) Equipment—Devices that have a degree of permanence to the business, contribute to multiple processing cycles over time, and generally constitute fixed assets, other than land and buildings, that are capitalized and depreciated for purposes of business and accounting practices.

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

(C) Machinery—Combinations of parts that work together as a functioning unit, even if they are subordinate elements of more complex machinery. Machinery may be simple or complex, but does not include the replacement of an individual part, even if that part becomes an element of a functioning machine.

(D) Motor fuel—Gasoline, diesel fuel, kerosene, and blended fuel, as defined in section 142.800, RSMo.

(E) Repair and replacement parts—Articles of tangible personal property that are components of machinery and equipment, which can be separated from the machinery or equipment and replaced. Like machinery and equipment, parts must have a degree of permanence and durability. 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. Substances such as coolants that are added to machinery and equipment for operation are not parts. Substances such as paints or adhesives that adhere to the surface of machinery and equipment, but are not distinct articles of tangible personal property, are not parts.

(F) For the purposes of this rule, supplies shall mean—Tangible personal property consumed in producing crops or milk, or raising

and feeding livestock, fish, poultry, pheasants, chukar, or quail for ultimate sale at retail.

(3) Basic Application of Exemption.

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

1. Used exclusively for agricultural purposes;

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

3. Used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail. The term "used directly" encompasses items that are used in some manner prior to the actual commencement of production, during production, or in some manner after the production has terminated. In determining whether items are used directly, consideration must be given to the following factors:

A. Where the items in question are used;

B. When the items in question are used; and

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

(B) Pursuant to section 144.045.1, RSMo, farm machinery or equipment that would otherwise qualify as exempt farm machinery and equipment will not lose its exempt status merely because the machinery or equipment is attached to a vehicle or real property. Such equipment includes, but is not limited to, a grinder mixer mounted on a vehicle or special livestock flooring. When exempt farm machinery or equipment attached to a motor vehicle is sold with the motor vehicle, the part of the total sales price attributable to the farm machinery or equipment is exempt from tax if the farm machinery or equipment is separately invoiced. If not separately invoiced, the total sales price is subject to tax as a motor vehicle.

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

(D) Pursuant to section 144.030.2(34), RSMo, all sales of grain bins for storage of grain for resale are exempt; pursuant to this section, parts purchased separately for these bins are not exempt. However, grain bins, including all parts, that are used in production of a farm product and qualify as farm machinery and equipment are exempt pursuant to section 144.030.2(22), RSMo.

(E) Pursuant to section 144.063, RSMo, fencing and motor fuel used for agricultural purposes are exempt.

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

1. A motor vehicle and parts for a motor vehicle do not qualify as exempt farm machinery or equipment. A trailer and parts for a trailer generally do not qualify as tax exempt farm machinery or equipment. The terms motor vehicle and trailer are defined by Chapter 301, RSMo;

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

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

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

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

6. Building materials and general heating, lighting, and ventilation equipment for nonproduction areas; and

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

(G) Example A is a list of items of farm machinery, equipment, and supplies that will usually be exempt if used exclusively for agricultural purposes on land owned or leased for the purpose of producing farm products and used directly in producing farm products or livestock to be sold ultimately at retail.

(4) Examples.

(A) Usually Exempt Items.

Anti-freeze
Artificial insemination equipment
Augers
Bale loader
Bale transportation equipment
Baler twine
Baler wire
Balers
Batteries for farm machinery and equipment
Bedding used in production of livestock or poultry for food or fiber
Binder twine
Binders
Brooders
Bulk feed storage tanks
Bulk milk coolers
Bulk milk tanks
Bulldozers used exclusively in agricultural production
Calcium for tires
Calf weaners and feeders
Cattle currying and oiling machine
Cattle feeder, portable
Chain saws for commercial use in harvesting timber, lumber, and in orchard pruning
Chicken pluckers
Choppers
Cleansing agents and disinfectants for agricultural process
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
Ear Tags
Egg handling equipment
Ensilage cutters
Ether
Fans, livestock and poultry
Farm tractors
Farm wagons
Farrowing houses, portable
Farrowing crates
Feed carts
Feed grinders/mixers
Feed storage bins
Feeders
Fencing Materials
Fence Posts
Fertilizer distributors
Field drain tile
Flooring slats
Foggers
Forage boxes
Forage harvester
Freon
Fruit graters
Fruit harvesters
Fuel additives
Gates
Generators
Gestation crates

GPS—Global Positioning System equipment
Grain augers
Grain bins for storage of grain for resale (but not separately billed parts or add-ons to these grain bins)
Grain binders
Grain conveyors
Grain drills
Grain elevators, portable
Grain handling equipment
Grain planters
Greases and oils
Harrows (including spring-tooth harrow)
Hay loaders
Head gates
Heaters, livestock and poultry
Hog feeders, portable
Hog rings
Hoists, farm
Husking machines
Hydraulic fluid
Hydro-coolers
Incubators
Irrigation equipment
Light bulbs
Livestock feeding, watering, and handling equipment
Lubricating oils and grease
Manure handling equipment (including front and rear-end loaders and blades)
Manure spreaders
Marking chalk
Milk cans
Milk coolers
Milk strainers
Milking equipment (including bulk milk refrigerators, coolers, and tanks)
Milking machine
Motor Fuel (gasoline, diesel fuel, kerosene, and blended fuel)
Mowers, hay and rotary blade used exclusively for agricultural purposes
Off-road utility vehicles, other than all-terrain vehicles (provided the vehicle qualifies as farm machinery or equipment)
Panels, livestock
Pickers
Planters
Plows
Posthole diggers
Poultry feeder, portable
Pruning and picking equipment
Repair and replacement parts for exempt machinery
Rollers
Root vegetable harvesters
Rotary hoes
Scales (not truck scales)
Seed cleaners
Seed planters
Seeders
Shellers
Silo unloaders
Snow Fence
Sorters
Sowers
Sprayers
Spreaders
Sprinkler systems, livestock and poultry
Squeeze chutes
Starting Fluid
Subsoiler
Tarps to protect agriculture products
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
Wire fencing

(B) Usually Taxable Items.

Acetylene torches
Air compressors
Air tanks
All-terrain vehicles (unlike an off-road utility vehicle that does not meet the definition of a motor vehicle, an all-terrain vehicle is a motor vehicle because it has a seat that is straddled and handlebars for steering)
Automobiles
Axes
Barn ventilators
Brooms
Brushes
Building materials and building supplies
Bulldozers
Cement
Chain saws
Construction tools
Electrical wiring
Equipment and supplies for home or personal use
Fence building tools
Field toilets
Fire prevention equipment
Garden hose
Garden rakes and hoes
Gasoline tanks and pumps
Golf carts
Hammers
Hand tools
Hog ringers
Lamps
Lanterns
Lawnmowers
Nails
Office supplies and equipment
Packing room supplies
Paint and decals
Personal property installed in or used in housing for farm workers
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
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
Wrenches

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

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

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

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

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

AUTHORITY: section 144.270, RSMo Supp. 2009 and section 144.705, RSMo 2000. Original rule filed Nov. 18, 1999, effective June 30, 2000. Amended: Filed Oct. 2, 2009, effective May 30, 2010.*

**Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961, 2008; and 144.705, RSMo 1959.*

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

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

12 CSR 10-110.910 Livestock

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

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

(2) Definition of Term.

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

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

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

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

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

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

(3) Basic Application of Exemptions.

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

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

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

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

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

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

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

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

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

1. The poultry is sold for breeding purposes; or

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

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

4. The poultry are purchased for resale.

(J) Sales of animals for the purchaser's personal enjoyment or use only, are subject to tax. Sales of animals for breeding or feeding purposes as part of a business enterprise are not subject to tax.

(4) Examples.

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

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

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

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

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

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

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

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

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

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

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

PURPOSE: Sections 144.030.2(1), (22), and (32), RSMo, exempt the sales of certain grains, seed, pesticides, limestone, fertilizer and herbicides. This rule explains the

requirements that must be met in order to qualify for these exemptions. Section 144.020.1(3), RSMo, taxes certain utility services. This rule explains the application of this taxing provision for sales to agricultural consumers.

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

(2) Definition of Terms.

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

(B) Livestock—See 12 CSR 10-110.900.

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

(3) Basic Application of Tax.

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

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

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

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

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

(4) Examples.

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

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

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

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

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

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

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

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

12 CSR 10-110.950 Letters of Exemption Issued by the Department of Revenue

PURPOSE: Chapter 144, RSMo provides that certain organizations are exempt. This rule sets out the steps necessary to obtain a letter of exemption from the department.

(1) In general, the department issues letters of exemption to qualifying exempt entities. Documentation verifying the exempt status of the organization must be filed with the department to obtain a letter of exemption.

(2) Application of the Rule.

(A) The seller is responsible for collecting tax unless the exempt entity provides proof that it is exempt. One form of proof of exemption is a letter of exemption issued by the department.

(B) An organization seeking a letter of exemption certificate must complete a Missouri Sales/Use Tax—Exemption Application—Form 1746. If the documentation establishes that the entity qualifies as an exempt entity, the department issues a letter of exemption. Once a letter of exemption is issued by the department, it will continue in effect unless there are changes in the structure or operation of the organization causing the exemption to be invalid.

(C) The department may require the following supporting documentation to verify the claim:

1. A copy of the Articles of Incorporation, Bylaws or both;

2. A copy of the Section 501 tax exemption letter or ruling issued by the United States Department of Treasury, Internal Revenue Service;

3. 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;

4. 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;

5. 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

6. Any other documents, statements and information as may reasonably be requested by the Department of Revenue.

(D) If any of the documents requested above are not submitted with the application, a letter of explanation must accompany the application. Federal agencies and instrumentalities, Missouri state agencies and Missouri political subdivisions are not required to send supporting documentation. Out-of-state political subdivisions do not qualify.

(E) Foreign diplomatic and consular personnel exempt from Missouri sales by treaty need not obtain a letter of exemption. The United States Department of State will issue an exemption card for use.

AUTHORITY: section 144.270, RSMo 2000. Original rule filed Aug. 1, 2000, effective Jan. 30, 2001. Amended: Filed Oct. 15, 2002, effective April 30, 2003.*

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

12 CSR 10-110.955 Sales and Purchases—Exempt Organizations

PURPOSE: Sections 144.030.1, 144.030.2(6), 144.030.2(17), 144.030.2(19), 144.030.2(20), 144.030.2(21), 144.030.2(22), 144.030.2(27), 144.030.2(36) and 144.062, RSMo exempt certain types of organizations from tax on certain transactions. This rule clarifies which transactions are exempt for each type of organization.

(1) In general, some organizations are exempt from tax on all or certain sales and purchases, while other organizations are only exempt on all or certain purchases. An exemption from federal income tax does not necessarily exempt an organization from state sales or use tax.

(2) Definition of Terms.

(A) Exempt organization—one (1) of the following types of organizations:

1. United States government or agency;
2. Political subdivisions of the state of Missouri;
3. Missouri Department of Transportation;
4. Rural water districts;
5. Religious organizations and institutions;
6. Charitable organizations and institutions;
7. Public elementary and secondary schools;
8. Not-for-profit civic, social, service or fraternal organizations;
9. Eleemosynary, penal institutions and industries of the state of Missouri;
10. Public and private not-for-profit post-secondary educational institutions;
11. State of Missouri relief agencies;
12. Benevolent, scientific and educational agricultural associations;
13. Nonprofit summer theater organizations;
14. Missouri state fair and county agricultural and mechanical societies;
15. Private not-for-profit elementary and secondary schools;
16. Interstate compact agencies.

(B) Charitable—to benefit the common good and welfare of the people of a community while relieving government of a financial burden that it would otherwise be required to meet.

(C) Civic—concerned with and related to the citizenry at large and benefiting the community it serves on an unrestricted basis.

(D) Direct sales—sales of tangible personal property or taxable services to an organization for use in its exempt functions and activities or sales by an organization where the net proceeds from such sales are for its charitable purpose.

(E) Direct costs—costs directly incurred in making direct sales. Direct costs do not include indirect costs such as overhead costs.

(F) Educational—to provide with knowledge or training.

(G) Net proceeds—the proceeds remaining from direct sales after deducting direct costs.

(H) Exemption letter—a document issued by the Department of Revenue recognizing an organization's exemption from sales or purchases or both.

(3) Basic Application of Rule.

(A) All sales of tangible personal property or taxable services to the United States government or its agencies and all sales of tangible personal property used exclusively in the manufacturing, processing, modification or assembling of products that are sold to the United States government or its agencies are exempt from tax. See 12 CSR 10-112.300.

(B) All sales of tangible personal property or taxable services to the state of Missouri or its political subdivisions are exempt from tax. Except for school districts and the Missouri Department of Transportation, sales by the state of Missouri and its political subdivisions are subject to tax. Sales by school districts and the Missouri Department of Transportation are exempt from tax. Amounts paid in or for any place of amusement, entertainment or recreation, games or athletic events, including museums, fairs, zoos and planetariums, owned or operated by a political subdivision are exempt from tax, if all the proceeds benefit the political subdivision. Sales to other states and their political subdivisions are not exempt from tax.

(C) All sales of tangible personal property to Missouri rural water districts are exempt from tax. Sales by such organizations are subject to tax, unless otherwise exempt.

(D) All sales made to or by any religious and charitable organizations and institutions in their religious, charitable or educational functions and activities are exempt from tax. All sales by the same type of organizations and institutions of other states are exempt from tax providing such organizations and institutions are exempt from a similar tax in their own states.

(E) All direct sales made to or by Missouri not-for-profit civic, social, service or fraternal organizations, including qualified fraternal organizations exempt under *Internal Revenue Code* Section 501(c)(8) and (10), solely in their civic or charitable functions and activities are exempt from tax providing the net proceeds are designated for civic or charitable functions and activities. Sales to or by not-for-profit civic, social, service or fraternal organizations of other states are exempt from tax if such organizations are exempt from a similar tax in their own states and otherwise qualify for the exemption in Missouri.

(F) All sales made to or by public elementary and secondary schools in their educational functions and activities are exempt from tax. School districts are also exempt from all sales by or to the district. All sales to or by public elementary and secondary schools of other states are exempt from tax providing such public elementary and secondary schools are exempt from a similar tax in their own states.

(G) All sales to eleemosynary, penal institutions and industries of the state of Missouri are exempt from tax. Sales by such organizations are subject to tax, unless otherwise exempt.

(H) All sales to public and private not-for-profit post-secondary education institutions are exempt from tax. Sales by such organizations are subject to tax, unless otherwise exempt. Sales made to or by public and private not-for-profit post-secondary education institutions of other states are exempt from tax if such organizations are exempt from a similar tax in their own states.

(I) All sales to state of Missouri relief agencies are exempt from tax. Sales by such organizations are subject to tax, unless otherwise exempt.

(J) All ticket sales by benevolent, scientific and educational agricultural 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 are exempt from tax. All ticket sales by the same type of associations of other states are exempt from tax providing such associations are exempt from a similar tax in their own states.

(K) All ticket sales by nonprofit summer theater organizations exempt from federal income tax under the provisions of the *Internal Revenue Code* are exempt from tax. All ticket sales by the same type of organizations of other states are exempt from tax providing such organizations are exempt from a similar tax in their own states.

(L) All admission charges and entry fees to the Missouri state fair and any fair conducted by a county agricultural and mechanical society organized and operated pursuant to sections 262.290 to 262.530, RSMo are exempt from tax.

(M) All sales to private not-for-profit elementary and secondary schools are exempt from tax. All sales to private not-for-profit elementary and secondary schools of other states are exempt from tax if such organizations are exempt from a similar tax in their own states.

(N) All sales to an interstate compact agency created pursuant to sections 70.370 to 70.430, RSMo ("Bi-State Development Agency") and sections 238.010 to 238.100, RSMo ("Kansas City Area Transportation Authority") in the exercise of the functions and activities of such agencies as provided by compact are exempt from tax.

(O) For exempt entities listed in 144.062, RSMo, all sales of tangible personal property and materials, for the purpose of constructing, repairing or remodeling facilities that are related to the entity's exempt functions and activities, to a contractor or other entity purchasing for the exempt entity pursuant to the requirements of section 144.062, RSMo, are exempt from tax. To claim the exemption, the exempt entity must provide a project exemption certificate to all contractors, subcontractors or other entities. Such contractors, subcontractors and other entities must provide a copy of the project exemption certificate to sellers when purchasing tangible personal property or materials for such facilities. See 12 CSR 10-112.010.

(4) Examples.

(A) A nonprofit, fraternal benefit organization supports several local youth activities. An Exemption Letter for the organization was obtained from the Department of Revenue. The organization operates a lounge that is open to the public. A substantial amount of its revenue is derived from beverage sales in its lounge. All revenue from the lounge is deposited into the organization's general account and is not separately accounted for. All operational expenses, as well as costs of the local youth activities, are paid from the general account. Although the organization has an Exemption Letter, all beverage sales are subject to tax as the net proceeds from beverage sales are not separately accounted for and used solely for the organization's civic activity of supporting local youth activities.

(B) A nonprofit fraternal benefit organization will hold a chili feed to buy public park playground equipment. All net proceeds of the direct sales of chili will go to the purchase of the playground equipment. The organization may purchase the chili ingredients and serving equipment exempt from tax and should not charge a sales tax on the chili sales.

(C) A nonprofit charitable organization operates a gift shop located within a nonprofit hospital. The hospital serves both paying and indigent patients. All profits remaining after paying for expenses of the gift shop go to benefit the hospital. Customers of the gift shop are primarily the hospital's patients and visitors and not the general public. All sales to and by the organization are exempt from tax because its sales are limited to hospital patients and visitors and all profits are for the charitable purpose of the hospital, to provide medical care for all who may seek its services.

(D) A Missouri contractor purchases materials and supplies in Missouri to perform a construction contract in a neighboring state for a public secondary school. The purchases are exempt providing the public secondary school in the other state is exempt from a similar tax in its own state.

(E) A Missouri contractor purchases materials and supplies in Missouri to perform a construction contract for a Missouri school district. The school district is an exempt entity listed in section 144.062, RSMo. Prior to making its purchases, the contractor obtains an authorized exemption certificate from the district. The contractor's purchases are exempt from tax because it obtained a copy of the authorized exemption certificate prior to making its purchases.

(F) A Missouri charitable organization is authorized and operates a Missouri fee office for the Department of Revenue. The profits of the organization are used to purchase clothing and books for indigent families. Purchases of equipment and supplies for operating its fee office are not exempt from tax as these purchases are not for its charitable purpose. Purchases of clothing and books for indigent families are exempt from tax as these purchases are for its charitable purpose.

AUTHORITY: section 144.270, RSMo 2000. Original rule filed July 31, 2001, effective Feb. 28, 2002.*

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

St. John's Medical Center, Inc. v. Spradling, *510 S.W.2d 417 (Mo. 1974). Nonprofit hospitals and a county hospital served paying and indigent patients. The hospital operated cafeterias and other nonprofit charitable organizations operated gift shop within each hospital. The cafeterias and gift shops served primarily staff, patients and visitors, as there was no intent to serve the general public. All profits from the cafeterias and gift shops were given to the hospitals. The primary purpose of operating the cafeterias and gift shops was not to make profits, but to use any income from those operations for the operation of the hospitals for benefit of each hospital's patients whether paying or indigent. Sales by the cafeterias and gift shops were exempt from tax.*

Anheuser-Busch Employees' Credit Union v. Director of Revenue, *Case No. 90-001646 RS (A.H.C. 1992). A credit union that was a member-owned and controlled not-for-profit Missouri credit union organized with the purpose to encourage thrift and to educate its members in the prudent and responsible use of money was not exempt from tax as a charitable or educational organization as its activities were not charitable or educational in nature. The credit union was also not exempt as a civic, social or service organization as sales made by or to the credit union were not within its civic or charitable functions and activities.*

Benevolent and Protective Order of the Elks v. Director of Revenue, *Case No. 92-000138 RV (A.H.C. 1992). The Elks Club was a not-for-profit fraternal organization that received an Exemption Letter from the department of revenue. The Elks operated a bar and sold soft drinks, alcoholic drinks and snack foods to its members and guests and used these revenues to pay for its costs of operation, and to make charitable and civic donations. The revenues from the bar were not exempt from tax as the profits were not used solely for exempt purposes and the bar was primarily operated for fraternal and social reasons and not solely to raise money for charitable and civic purposes.*

Godwin v. Director of Revenue *(AHC 1991). A city contracted with taxpayer to manage and operate a golf course owned and maintained by the city. The taxpayer deposited all receipts from fees for use of golf carts and the course and fees for separate driving range and pro shop owned and operated by the taxpayer in a single bank account controlled by the taxpayer. Each week, the taxpayer remitted the contractual percentage of the cart and course fees to the city. The taxpayer retained all the other fees. The Commission held that all proceeds of the cart and course fees were exempt from tax under section 144.030.2(17), RSMo because the course was owned by the city and operated through a contract with the taxpayer. The Commission also held the fees from the pro shop and driving range were not exempt because these activities were the taxpayer's own enterprise and all proceeds were retained by the taxpayer.*

Zoological Park v. Director of Revenue *(AHC 1991). The AHC held that the exemption provided by section 144.020.2(17), RSMo for charges in or for a place of amusement owned or operated by a municipality includes all sales made by the municipal place of amusement, including sales of tangible personal property.*

National Organization of Black Law Enforcement Executives, St. Louis Chapter v. Director of Revenue, *Case No. RV-85-1244 (A.H.C. 1988). The organization was a Missouri not for profit corporation exempt from federal tax under Internal Revenue Code Section 501(c)(3). Its membership criteria was very general with the only requirement that a member have an interest in the goals of the organization. Its primary purposes were to evaluate legislation, form a network of support for minorities in law enforcement, discourage racism in the field of criminal justice and give financial assistance to the less fortunate. Its purposes were accomplished by monitoring legislation, donating funds to local community service projects and providing a social forum for those interested in the area of law enforcement. All of its activities were open to the public. It derived its funds through dues and fundraisers. The organization qualified as a charitable organization exempt from tax.*

St. John's Regional Medical Health Center v. Director of Revenue, *Case No. RS-88-0054 (A.H.C. 1988). Sales made by and to a hospital's fitness center were exempt as sales to a service organization in its educational function. The fitness center's various exercise programs and exercise instructors assigned to each member taught and motivated individuals to think and act properly as it relates to healthy lifestyles.*

St. Louis Calligraphy Guild v. Director of Revenue, *Case No. RS-86-1517 (A.H.C. 1987). The Guild was a Missouri not for profit chartered organization. Its purposes were to encourage co-operation and free intercourse among calligraphers, calligraphy teachers, calligraphy students, craftsmen, publishers and other in calligraphic activities, to hold competitions and exhibitions, to further the education and appreciation of calligraphy and to promote the improvement, advancement and excellence of calligraphy. Membership in the Guild was open to the public and only limited by one's interest in calligraphy. The Guild did not qualify to be exempt from tax, as it did not relieve government of the burden of providing a service that would otherwise be a governmental responsibility.*

Humanalysis, Inc. v. Director of Revenue, *Case No. RS-85-2289 (A.H.C. 1987). Humanalysis was a not for profit corporation qualified as a tax-exempt organization under Internal Revenue Code Section 501(c)(3). Humanalysis was created to conduct research studies for federal, state and local governments with an emphasis on social welfare. Humanalysis is fully compensated on a cost basis by the agency that grants it money for its research. Humanalysis did not qualify as a charitable organization exempt from tax as it did not relieve government of the burden of providing a service which would otherwise be a governmental responsibility because it was paid for by its research service. However, Humanalysis qualified as a not for profit civic organization exempt from tax as its research was conducted on a not for profit basis, was available to the public and served the public as it was conducted with a special emphasis on problems regarding social welfare.*

12 CSR 10-110.990 Tax—Sales of Food

PURPOSE: Section 144.014, RSMo provides for a reduced tax rate for certain sales of food. This rule explains when the reduced rate applies.

(1) In general, qualified sales of food by a qualified business are taxed at a reduced state rate of 1.225% plus any applicable local tax. All other sales of food are taxed at the full state rate of 4.225% plus any applicable local tax.

(2) Basic Application of Rule.

(A) Sales of food subject to the reduced rate include food that qualifies under the Federal Food Stamp Program. This includes food or food products for home consumption and seeds and plants for use in gardens to produce foods for personal consumption. Alcoholic beverages, tobacco and hot food items ready for immediate consumption do not qualify for the reduced rate. Food items refrigerated or at room temperature qualify for the reduced rate, even if the purchaser elects to heat the item on the business' premises. Bakery items, even if still warm from baking, are qualified foods.

(B) A business whose gross receipts from sales of food and drink prepared by the business for immediate consumption, either on or off premises, are 80% or less of its total gross receipts must remit tax on its qualifying food sales at a reduced state tax rate of 1.225% plus any applicable local tax.

(C) Sales of qualifying food through vending machines are subject to the reduced tax rate.

(3) Examples.

(A) A grocery store sells nonfood items and qualifying food items. The store will charge the regular tax rate on the nonfood items and the reduced tax rate on the qualifying food items.

(B) A vending machine company provides two vending machines to a business. One machine is for cold items and one machine keeps items hot. Only the cold items are eligible for the reduced tax rate. The hot items are subject to the regular tax rate.

(C) A convenience store sells burritos from its freezer. The convenience store provides a microwave so the purchaser can heat it. The sale of the burrito is taxed at the reduced rate because it is a qualifying food item.

(D) A vending machine company sells popcorn and soup in microwave pouches and containers. These items are sold at room temperature and are heated by the purchaser in a microwave provided in the vending area. These items are eligible for the reduced tax rate.

(E) A fast food restaurant sells cold salads and cold soft drinks. These cold items represent approximately 10% of total gross receipts. Because the restaurant's total food sales of items prepared for immediate consumption are more than 80% of the total sales, the restaurant should charge the regular tax rate on all its food sales.

(F) A convenience store sells prepared cold sub sandwiches, ice cream and cold drinks. The store also prepares and sells hot dogs and chili. All items are sold "to go." The store should charge the reduced tax rate on the cold items, but should charge the regular tax rate on the hot items.

(G) A company sells pre-packaged ice cream bars made by an unrelated ice cream manufacturer to neighborhood families from trucks. The ice cream truck driver should charge the reduced rate of tax because the seller does not prepare the ice cream bars and are not consumed on the premises of the seller.

(H) An ice cream vendor sells soft cones and pre-packaged ice cream bars made by an unrelated ice cream manufacturer at a football game. The gross receipts from the sales of soft cones are less than 80% of the ice

cream vendor's total gross receipts. None of the ice cream qualifies for the reduced rate because it is consumed on the premises.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed June 29, 2000, effective Jan. 30, 2001.*

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