

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax**

EMERGENCY AMENDMENT

12 CSR 10-103.555 Determining Taxable Gross Receipts. The director proposes to amend the purpose, sections (2) through (4), and re-letter existing subsections accordingly.

PURPOSE: This rule is being amended due to TAFP CCS HCS SB30, enacted by the 94th General Assembly, 2007.

*EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency amendment. This emergency amendment is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency amendment informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The director believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment filed Aug. ____, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008.*

*PURPOSE: Section 144.021, RSMo, imposes a tax on a seller's gross receipts. **Section 144.083, RSMo, addresses the application of tax involving third party payments.** This rule provides guidance for reporting gross receipts.*

(2) Definitions.

(A) Buydown payments—payments received by a seller under an agreement with a manufacturer or wholesaler to lower the cost of inventory sold to consumers for a stated sales price.

~~[(A)]~~ **(B) Gross receipts**—the total amount of the sale price of taxable services and tangible personal property including any services, other than charges incident to the extension of credit, that are a part of such sale and are capable of being valued in money, whether received in money or otherwise.

~~[(B)]~~ **(C) Rebate**—a return of part of an amount given in payment.

(D) Store coupons – coupons issued by the seller to reduce the stated price of a product to the purchaser.

~~[(C)]~~ **(E) Taxable sales**—the total amount of gross receipts plus or minus any adjustments permitted or required by law.

(F) Third party coupons – coupons issued by a manufacturer or other third party to apply to the purchase of the product.

(3) Basic Application of Tax.

(A) Tax is imposed on the total amount of the sale price received for the sale of tangible personal property and taxable services. The total amount of each sale should be reported as gross receipts even if the seller separately states to the customer the various components of the sale. Exempt sales should be deducted from gross receipts to arrive at taxable sales. Tax collected as a part of a sale should not be included in gross receipts.

(B) When a taxpayer receives consideration other than money, the full market value of the item exchanged should be included in gross receipts.

(C) When the *[taxpayer]* seller accepts third party coupons, **only the *[total sale]* price paid by the purchaser is included in the gross receipts subject to tax *[includes value of the coupon]*.** *[When the taxpayer accepts third party coupons along with food stamps, the value of the food stamps is not included in taxable sales, but the value of the coupon is included in taxable sales.]*

(D) The value of a **store coupon issued and redeemed** by *[the]* a seller is not *[included in taxable sales]* **subject to tax. Store coupons are not included in gross receipts.**

(E) When the seller accepts federal food stamp coupons, the value of the federal food stamp coupons is not included in gross receipts.

[(E)] **(F)** Rebates from sellers or manufacturers do not reduce taxable sales **unless they are offered instantly at the time of sale**, except for rebates on motor vehicles, boats, trailers and outboard motors.

[(F)] **(G)** A taxpayer accepting an article in trade as a credit or part payment on the purchase price should include the value of the article in gross receipts. The value of the article should be deducted from gross receipts when calculating taxable sales.

[(G)] **(H)** Money received in advance, such as down payments, layaways or gift certificates, are not included in gross receipts until the sale has been consummated.

[(H)] **(I)** Charges to customers for the extension of credit, such as late fees or financing charges are excluded from gross receipts.

[(I)] **(J)** A seller's expenses associated with utilizing the service of credit card companies are not excluded from gross receipts.

[(J)] **(K)** If the taxpayer's inventory is stolen or destroyed by fire or other casualty, the insurance receipts are not subject to tax and should not be included in gross receipts.

(L) When tangible personal property is subject to a federal manufacturer's excise tax imposed by sections 4041, 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261, or 4271 of Title 26, United States Code, the amount of the tax is not included in gross receipts if the retail seller collects the excise tax from the purchaser and remits it to the federal government.

(M) Gross receipts from the sale of cigarettes do not include the amount of the sale price that represents the state tax on the cigarettes under Chapter 149, RSMo. Gross receipts from the sale of other tobacco products include the amount of the sale price that represents the state tax on the other tobacco

products under Chapter 149, RSMo. Local cigarette taxes authorized by law and imposed and paid in the manner of the state tax under Chapter 149, RSMo, are not included in gross receipts. All other local cigarette taxes are included in gross receipts.

(N) Buydown payments are not gross receipts subject to tax. Buydown payments serve to reduce the sales price to all purchasers by reducing inventory cost to the seller. Buydown payments are not payments for the retail price of the product.

(4) Examples.

(A) A grocery store accepts manufacturer's coupons from its customers on purchases of various goods. The store sells aluminum foil for \$1.50. The customer presents to the store a \$.50 manufacturer's coupon and pays the remaining balance of \$1.00. The store submits the \$.50 coupon to the manufacturer for payment of the \$.50. The gross receipts from the sale of the aluminum foil are [~~\$1.50~~] **\$1.00** and total taxable sales are [~~\$1.50~~] **\$1.00**. Tax should be charged on [~~\$1.50~~] **\$1.00**.

(B) On Tuesdays, the same grocery store in Example (A) doubles all manufacturers' coupons. The store then receives \$.50 from the customer and \$.50 from the manufacturer. Gross receipts are [~~\$1.00~~] **\$.50**, and total taxable sales are [~~\$1.00~~] **\$.50**. Tax should be charged on [~~\$1.00~~] **\$.50**.

(C) An appliance manufacturer offers a \$100 cash rebate on an \$800 refrigerator. *[The store selling the refrigerator should charge tax on \$800.]* Tax is due on [~~\$800~~] **\$700**, *[whether]* if the rebate is received by the customer at the time of purchase. **If the customer must request the rebate from the manufacturer at [or] a later date, tax is due on \$800 because that is the sale price paid at the time of purchase.**

(D) A furniture retailer allows customers to "layaway" their purchases until they have paid the full sale price. When the customer has paid the full sale price, the retailer completes the sale and transfers the furniture to the customer. The furniture dealer should not include the layaway amount in its gross receipts until the sale is complete. At that time the total sale price should be reported as gross receipts.

(E) A construction company purchases a new bulldozer. The equipment dealer agrees to sell it a new machine for \$50,000 and give a trade-in allowance of \$10,000 for the old one. The equipment dealer should report \$50,000 in gross receipts. The equipment dealer should then deduct the \$10,000 trade-in value to arrive at taxable sales.

(F) A retailer sells a chair for \$100 to a customer who uses his credit card to pay for the purchase. The seller should charge tax on the full \$100 sales price of the chair. The seller should report \$100 in gross receipts, even though it must pay the credit card company a transaction fee.

(G) A retailer ordinarily sells a brand of cigarettes for \$4 per pack. The manufacturer of that brand of cigarettes agrees to a "buy-down" with the retailer. Under the buy-down agreement, the manufacturer will reimburse the retailer \$.50 per pack if the retailer sells the cigarettes for \$3.50 for a month. The gross receipts and taxable sales from the sales of the cigarettes are \$3.50 per pack, which includes the buy-down, less any amount attributable to the state tax imposed pursuant to Chapter 149, RSMo.

(H) A retailer ordinarily sells a brand of cigarettes for \$4 per pack. The manufacturer of that brand of cigarettes agrees with the retailer to reduce the purchase price to the retailer by \$.50 per pack if the retailer sells the cigarettes for \$3.50. The gross receipts from the sales of the cigarettes are \$3.50 per pack, less any amount attributable to the state tax imposed pursuant to Chapter 149, RSMo.

*AUTHORITY: section 144.270, RSMo [1994] 2000, and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Original rule filed Aug. 21, 2000, effective Feb. 28, 2001. Emergency amendment filed Aug. ____, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed rule, which covers the same material, is published in this issue of the **Missouri Register**.*