

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

EMERGENCY RULE

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.

*EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency rule. This emergency rule is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency rule 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 Senate Bill 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 rule, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency rule 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 rule is fair to all interested persons and parties under the circumstances. This emergency rule filed October 10, 2007, effective October 20, 2007, expires April 16, 2008.*

(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 cabinet maker'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 TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed October 10, 2007, effective October 20, 2007, expires April 16, 2008. A proposed rule, which covers the same material, is published in this issue of the **Missouri Register**.*