Missouri DEPARTMENT OF REVENUE

Food Preparation by a Retail Establishment Utility Refund Guidance

I. Introduction

The purpose of this document is to provide guidance to the utility industry as a result of a recent Administrative Hearing (AHC) decision regarding the taxation of sales of utilities consumed in food preparation by a retail establishment. Following a meeting with industry representatives of utility companies, the Missouri Department of Revenue (Department) is providing information concerning a possible state sales tax exemption and potential for refund claims that your food preparation customers may request because of the AHC decision in *Aquila Foreign Qualifications Corporation v. Director of Revenue*, Case No. 09-0376 RS (Mo. Admin. Hearing Comm'n, April 28, 2011).

The AHC's decision provided, in part, that food preparation customers have been deemed eligible for the exemption from state sales tax on purchases of utilities under Section 144.054.2 RSMo. Purchases of utilities by food preparation customers remain subject to local sales taxes.

As utility providers (electricity, gas, water), your customers may contact you in pursuit of activating an exemption for their purchases and requesting a state sales tax (not local sales tax) refund for the prior 36 months.

The Department has appealed the AHC decision to the Missouri Supreme Court; therefore, the utility companies cannot accept or activate any customer exemptions in good faith related to purchases of utilities for food preparation by a retail establishment at this time. The Department advises that applicable sales tax should be collected pending a Missouri Supreme Court decision.

II. Utility Refund Instruction and Guidance

Guidance for Retail Establishments in Preparing Utility Claims **(ATTACHMENT 1)**

III. Utility Usage Worksheets – Single Utility Service Provider

Electricity Utility Usage Worksheet **(ATTACHMENT 2)**
Gas Utility Usage Worksheet **(ATTACHMENT 3)**
Water Utility Usage Worksheet **(ATTACHMENT 4)**

IV. Utility Usage Worksheets – Multiple Utility Service Provider

Electricity, Gas, and Water Usage Worksheet (**ATTACHMENT 5)**

NOTE: The worksheet should only be used if your utility supplier provides more than one utility type (electricity, gas, and water).

V. Assignment of Right to Refund

Limited Power of Attorney and Assignment of Right to Refund **(ATTACHMENT 6)**

NOTE: Utility Providers may provide one Assignment of Right Form to those food establishment owners with multiple locations. It is not necessary that the Utility prepare an Assignment of Right Form for each of the food establishment owner's retail business locations.

VI. Questions About the Process

Please contact the Tax Resolution Section at (573) 526-9938.