

**Title 12.DEPARTMENT OF REVENUE
Division 10 – Director of Revenue
Chapter 102 – Sales/Use Tax – Taxpayers Rights**

PROPOSED AMENDMENT

12 CSR 10-102.016 Refunds and Credits. The department is amending the purpose and sections (1)-(3).

PURPOSE: This proposed amendment is necessary to conform to changes made to section 144.190, RSMo.

*PURPOSE: Section 144.190, RSMo permits a [taxpayer]seller to file a claim for refund of an over-payment of sales or use taxes resulting from a mistake of fact or law **and it permits a purchaser that is not able to obtain a refund of an over-payment of sales or use tax from the seller to file a claim for refund with the department.** Section 144.100, RSMo requires a [taxpayer] seller to file an amended return to correct an error or omission on a return. Section 144.746, RSMo allows the [taxpayer] seller and the department to extend by agreement the time to file a claim for refund. Section 144.030.2([23]24), RSMo establishes special refund procedures for purchasers of domestic utilities under a non-domestic utility rate classification. This rule explains requirements for obtaining a refund or credit on overpayment of sales and use taxes.*

(1) In general, if a [taxpayer] seller has overpaid tax, the [taxpayer] seller may file a claim for a refund with the department. **If a purchaser is not able to obtain a refund from the seller, the purchaser may qualify to file a claim for refund with the department.**

(2) Basic Application [of Tax].

(A) A [taxpayer] seller may file a claim for a refund within [*three (3)*] **ten- (10-)** years after the date of an overpayment. The date of the overpayment is the due date of the original return or the date paid whichever is later. The department will not consider a claim unless it is filed within the [*three (3)*] **ten- (10-)** year period. Every claim must be in writing, signed by the applicant, and must state the specific grounds upon which the claim is founded. If the overpayment is due to an error or omission in a previously filed return, the claim must be accompanied by an amended return for each period in which the tax was originally reported. If the error or omission is corrected in the return immediately following the filing period in which the error or omission occurred, no amended return or claim for refund is required.

(B) The person requesting the refund or credit must be the person who is legally obligated to remit the tax to the Department of Revenue[. *If a taxpayer*] **or the purchaser that originally paid the tax to the seller. A purchaser seeking a refund of an** erroneously [*pays sales tax to a vendor, the taxpayer should*] **paid tax must first** seek a refund from [*that vendor.*

Vendors] **the seller. A seller** may file a claim on behalf of the purchaser by submitting a claim for refund and amended returns for the period(s) in which the tax was erroneously remitted **or the seller may provide an assignment of rights to the purchaser to file the claim for refund. The purchaser may also file a claim for refund with the department if—**

1. The seller refuses to assign the rights to file a claim for refund within sixty (60) days of the date of the purchaser's written request to the seller;
2. The seller is out of business; or
3. The purchaser cannot locate the seller.

The claim by the purchaser is subject to any offset, defense, or any claim the director has against the purchaser or the seller.

(C) The department will **notify a registered seller of refund claims filed by a purchaser without the seller's assignment of rights. If the seller objects to the refund claim, the department will not pay the refund. If the seller agrees that the purchaser may pursue a refund claim, or fails to respond to the notification within thirty (30) days of the date of notification, the department will process the refund and will amend the return of the seller to reflect the refund if granted. A refund claim will not be considered filed until the seller agrees the purchaser may pursue a refund claim or thirty (30) days after the department has notified the seller of the purchaser's claim.**

[C/D] The department will issue a statement approving *[the]* a credit in the amount of the overpayment instead of a refund if the *[taxpayer]* seller requests a credit on the claim. *[In no case, however, should a person]* **A seller cannot** take a credit for any overpayment of tax unless prior approval has been obtained from the department. If it is determined later that the *[person]* seller will incur no future liability, for example if the business is closed, the **seller may return the credit** *[may be returned]* **authorization** to the department and request a refund. **A purchaser may not obtain a credit.**

[D/E] If a sale is rescinded, no amended return or claim for refund is required. The seller may adjust its gross receipts on its next filed return. *[However, t]* The adjustment may not exceed the gross receipts for the filing period.

[E/F] *[Interest is]* **Section 32.068, RSMo, establishes the interest rate paid on** *[all]* refunds *[at a rate established pursuant to section 32.057, RSMo]*. Interest does not apply to a credit.

[F] *No refunds will be granted for illegally or erroneously overcharged or overcollected sales tax incident to credit card discounts, imposition of sales tax by the retailer upon amounts representing cigarette tax imposed under Chapter 149, RSMo, or imposition of sales tax by the retailer upon amounts representing tax on sales of beer, liquor or wine under Chapter 311, RSMo.]*

(G) The *[department may recover any refund or credit erroneously made or allowed in an action against the person legally obligated to remit the tax.]* **seller and the department may extend, by agreement, the period allowed for filing a claim for refund. Such an agreement is allowed only if the time for filing a claim for refund has not yet expired.**

(H) *[A person making]* **In addition to the refund claim procedure described above, a purchaser of taxable, non-domestic** *[purchases of]* utility services *[and]* using any portion of the services for nontaxable domestic use may *[apply for]* **also claim a** *[credit or]* refund *[on the domestic use portion of]* **from the** *[purchase. In addition, a person making]* **department on the domestic** *[purchases]* **use portion of the purchase. A purchaser of utility services** *[on behalf of]* **for domestic use for** occupants of residential apartments, condominiums, and nursing homes through a single or master meter, may *[also apply for a credit or]* **claim a refund on the domestic use portion of the purchase** *[. Domestic use]*, **which includes common areas and facilities as well as vacant units. The claim for refund must be**

filed between the first day of the first month and the fifteenth day of the fourth month following the year of purchase.

[(I) Alternatively, the purchaser of nontaxable, domestic use utility services may request the utility company to apply for a refund on the domestic portion of its utility purchases. The utility company, as the seller of utilities, has three (3) years from the due date of its return for the period in which the domestic utilities were sold to file a claim for refund on behalf of the purchaser.]

[(J) The taxpayer and the department may extend by agreement the period allowed for filing a claim for refund. However, such an agreement is allowed only if the time for filing a claim for refund has not yet expired.]

(3) Examples.

(A) A *[vendor]* **seller** collects tax on a sale to a customer that takes place in August and reports it on its August sales tax return. In October, that customer presents a valid exemption certificate for the August sale. To claim a refund, the *[vendor]* **seller** must complete a claim for refund and submit it with a copy of the invoice, the customer's exemption certificate and an amended August return.

(B) A carpet *[vendor]* **seller** determines that in the past *[three (3)]* **ten (10)** years it has been collecting and remitting sales tax on carpet sales in which it is also installing the carpet in homes and businesses. The *[vendor]* **seller** purchases its carpet from a wholesaler located outside of the state. Therefore, the carpet *[vendor]* **seller** should have been paying use tax on its purchases of the carpet from its wholesaler and selling its carpet without charging sales tax on its installation sales. The *[vendor]* **seller** should complete amended sales tax returns for each period during the *[three (3)]* **ten (10)** years and amended use tax returns for each period during the *[three (3)]* **ten (10)** years. If the amended returns result in an overpayment, the carpet *[vendor]* **seller** may claim a refund by completing a refund application.

(D) A manufacturer discovers it paid tax on its purchase of a piece of equipment that qualified for an expanded plant exemption. The manufacturer purchased the equipment from an equipment supply company who reported the tax to the department. The supply company *[must]* **may** request the refund from the department on behalf of the manufacturer by submitting a refund application, the manufacturer's exemption certificate, and an invoice of the sale **or the supply company may provide the manufacturer an assignment of rights statement allowing the manufacturer to file the refund claim with the department.**

[(E) In March 1999, a taxpayer discovers it paid tax on a January 1996 sale for which it has an exemption certificate. The taxpayer submits a refund application for the exempt sale. Because the due date of the original January 1996 return was February 20, 1996, the refund application will be denied because it is not within the three (3)-year statute of limitations.]

[(F) In 1997, an apartment complex under a non-domestic rate classification pays the water bill, including sales tax, to the utility company for the entire complex. The apartment complex may file a claim for refund on its 1997 purchases of water prior to April 15, 1998.]

[(G) A nursing home that is under a nondomestic rate classification pays for the electricity, including tax for the entire facility in 1996, 1997 and 1998. The electric company may file a claim for refund on behalf of the nursing home in January 1999, as long as it is filed within three (3) years of the due date of the earliest return.]

[(H) The department begins an audit on a taxpayer on June 1, 1999, that will cover the tax periods May 1996 through May 1999. The department and the taxpayer may enter into an

agreement to extend the period for issuing an assessment and for filing a claim for refund for a specified period of time. The agreement must be made before the original expiration date for issuing the assessment or claiming the refund and may be extended by subsequent agreements.]

(E) In September 2019, a taxpayer discovers it paid tax on a January 2009 sale for which it has an exemption certificate. The taxpayer submits a refund application for the exempt sale. Because the due date and the date paid of the original January 2009 return and payment was February 20, 2009, the refund application will be denied because it is not within the ten- (10-) year statute of limitations.

(F) In 2017, an apartment complex under a non-domestic rate classification pays the water bill, including sales tax, to the utility company for the entire complex. The apartment complex may file a claim for refund on its 2017 purchases of water prior to April 15, 2018.

(G) A nursing home that is under a non-domestic rate classification pays for the electricity, including tax for the entire facility in 2010, 2011, and 2012. The electric company may file a claim for refund on behalf of the nursing home in January 2020, as long as it is filed within ten (10) years of the due date or the date paid whichever is later.

(H) A purchaser purchases manufacturing equipment on July 1, 2012, and pays sales tax on the purchase. On October 1, 2012, the purchaser presents an exemption certificate to the seller and requests the seller in writing to file a refund request for the taxes paid. The seller does not respond to the purchaser's request within sixty (60) days. The purchaser then files a refund claim with the department and the department notifies the seller of the claim for refund. The seller does not respond to the department's notification. The department verifies that the equipment qualifies for the exemption and the taxes paid on the purchase. The department issues the refund to the purchaser.

(I) A purchaser purchases manufacturing equipment on July 1, 2012, and pays sales tax on the purchase. On October 1, 2012, the purchaser presents an exemption certificate to the seller and requests the seller in writing to file a refund for the taxes paid. The seller does not respond to the purchaser's request within sixty (60) days. The purchaser then files a refund claim with the department and the department notifies the seller of the claim for refund. The seller responds to the department's notification and directs the department to not refund the tax. The department cannot issue the refund to the purchaser.

AUTHORITY: section 144.270, RSMo 2016. This rule originally filed as 12 CSR 10-110.016. Original rule filed Sept. 29, 1999, effective March 30, 2000. Changed to 12 CSR 10-102.016 Dec. 31, 2000. Amended: Filed April 1, 2002, effective Oct. 30, 2002. Amended: Filed Sept. 8, 2020.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Revenue, Administration Division, 301 W High Street, Room 218, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*