TITLE 12 DEPARTMENT OF REVENUE
Division 10 – Director of Revenue
Chapter 2 – Income Tax

PROPOSED AMENDMENT

12 CSR 10-2.017 Transient Employer Financial Assurance Instrument for Employer's Withholding Tax. The department is amending sections (2)- (4), (8), and (9).

PURPOSE: This amendment replaces a statutory reference for the definition of letter of credit, removes certified checks as means of paying a cash bond, and updates the incorporation by reference date of certain forms, among other changes.

PURPOSE: This rule establishes guidelines for filing financial assurance instruments to secure payment of withholding tax by out-of-state transient employers.

PUBLISHER'S NOTE: The secretary of state has determined that publication of the entire text of the material that is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Out-of-State Transient Employer Defined. "Transient employer" has the same meaning as used in section 285.230, RSMo.

(2) Every transient employer shall file with the director of revenue a financial assurance instrument including but not limited to a cash bond, surety bond, or an irrevocable letter of credit *[which has the same meaning as used in section 400.5-103 RSMo]*. **For purposes of this rule, "letter of credit" has the meaning given in section 400.5-102, RSMo.**

(3) Types of Financial Assurance Instruments. Financial assurance instruments which may be posted to secure payments of taxes by out-of-state transient employers shall be in the form of a surety bond, cash bond, an irrevocable letter of credit issued by any state or federal financial institution, an assignment of certificate of deposit, or any other financial assurance instrument which is deemed acceptable by the director of revenue. Other financial assurance instruments will be reviewed for approval on a case-by-case basis.

(A) A surety bond shall be issued by an insurance company licensed for bonding in Missouri on behalf of the applicant on the Surety Bond Form 331. The form shall bear the seal of the insurance company, the effective date, and it shall be accompanied by a power of attorney letter or form if signed by the attorney-in-fact. **The** *[S]s*urety bond form shall also contain the signature of the applicant.

(B) A cash bond shall be paid to the director of revenue in the form of a cashier's check*[,]* **or** money order*[, or certified check]* and be accompanied by a Cash Bond Form 332.

(C) An irrevocable letter of credit issued by any state or federal financial institution may be submitted to the Department of Revenue on a**n** Irrevocable Letter of Credit Form 2879.

1. The letter of credit shall be irrevocable and the beneficiary shall be the Department of Revenue. Payment shall be made immediately upon presentment of a demand for payment signed by the director of revenue or a designated representative.

2. All letters of credit shall conform to the Department of Revenue's required format in the Irrevocable Letter of Credit Form 2879. The letter of credit must include an authorization for release of confidential information allowing the director of revenue or a designee to release confidential tax information to the issuing bank.

3. A demand for payment upon a letter of credit shall be presented for payment only for the reason that bond proceeds are needed to satisfy any delinquencies or claims as provided for in section 285.230, RSMo.

4. Letters of credit shall have a term of one (1) year and shall be automatically renewable on an annual basis for an additional one (1) year. A letter of credit may be canceled by the issuer sixty (60) days after written notice is delivered to the Department of Revenue. Upon the notice of cancellation, the transient employer shall be required to file a new financial assurance instrument on or before the expiration of the sixty- (60-) day period. If the required financial assurance instrument is not received within that time period, the employer commits the crime of failure to file a financial assurance instrument if the employer knowingly fails to comply.

5. If a transient employer ceases business or desires to substitute a financial assurance instrument for their letter of credit, the director of revenue shall retain the letter of credit for a period of ninety (90) days or until the director of revenue is satisfied that no claims exist against the letter of credit.

6. A transient employer shall be required to increase the amount of the letter of credit or provide an additional financial assurance instrument in any situation where the employer would be required to increase or provide an additional financial assurance instrument as provided for in section 285.230, RSMo. An increase to the amount of the letter of credit shall be deemed the submission of an additional financial assurance instrument for the amount of the increase.

(D) An assignment of certificate of deposit may be submitted to the Department of Revenue using Form 4172. The certificate of deposit must be issued by a state or federally chartered financial institution.

(4) Amount of Financial Assurance Instrument. The amount of the financial assurance instrument shall be determined by the director of revenue. This financial assurance instrument shall not be less than the average estimated quarterly withholding tax liability of the taxpayer, but in no case less than five thousand dollars ($5,000) nor more than twenty-five thousand dollars ($25,000).

(A) Example 1: Mr. Kansas Contractor has been awarded a contract to renovate a building in Kansas City, Missouri. Mr. Kansas Contractor has employed ten (10) Missouri residents to assist in the renovation. The employees are *[being]* paid four hundred dollars ($400) in wages per week. The average estimated quarterly withholding tax liability of Mr. Kansas Contractor is less

than five thousand dollars ($5,000). Mr. Kansas Contractor is required to post the minimum five thousand dollar ($5,000) financial assurance instrument.

(B) Example 2: Mrs. Illinois Drywaller accepts a contract to drywall several new apartment complexes in St. Louis, Missouri. Mrs. Illinois Drywaller hires numerous Missouri resident drywallers to assist in the work. Mrs. Illinois Drywaller's Missouri monthly withholding is two thousand three hundred dollars ($2,300). Mrs. Illinois Drywaller is required to post a financial assurance instrument in the amount of six thousand nine hundred dollars ($6,900). The six thousand nine hundred dollars ($6,900) is the approximate amount of withholding for these employees for one (1) calendar quarter.

(5) General Financial Assurance Instrument Examples. The following are general examples illustrating the out-of-state transient employer financial assurance instrument requirement:

(A) Example 1: Mr. Jones, an out-of-state contractor, has been awarded a contract to perform work in Missouri. He must obtain and file an application for a Missouri Employer's Withholding Tax Identification Number. Furthermore, he does not meet the criteria to be exempt from the financial assurance instrument requirement. Mr. Jones, therefore, must submit a financial assurance instrument with the application before he can obtain his Missouri Withholding Tax Identification Number;

(B) Example 2: Mrs. Davis is an out-of-state contractor whose principal place of business is in a county of another state which borders Missouri. Mrs. Davis is a transient employer and must file an application for a Missouri Employer's Withholding Tax Identification Number. Mrs. Davis has not been under contract to perform work in Missouri for at least sixty (60) days each year for the past two (2) calendar years and, therefore, must submit a financial assurance instrument with the Missouri Tax Registration Application; and

(C) Example 3: Mr. Smith, an out-of-state contractor, has been awarded a contract to perform work in Missouri. Mr. Smith is a transient employer and must file an application for a Missouri Employer's Withholding Tax Identification Number. Mr. Smith does meet all the criteria for exemption from the financial assurance instrument requirement. Therefore, he is not required to file a financial assurance instrument with the application but must notify the Department of Revenue of his exemption status.

(6) Replacing or Applying for Return of Financial Assurance Instrument.

(A) If a cash bond is replaced by a different type of financial assurance instrument, the cash bond will be refunded to the taxpayer, provided all taxes due are paid and the taxpayer files a request for refund on the forms provided by the Department of Revenue.

(B) If a surety bond is replaced by a different type of financial assurance instrument, the surety bond will be canceled, provided the issuing insurance company provides the Department of Revenue with a written notice sixty (60) days prior to the cancellation date. This cancellation shall not affect any liability incurred or accrued prior to the termination of the sixty- (60-) day period.

(C) If an irrevocable letter of credit is replaced by a different type of financial assurance instrument, the irrevocable letter of credit will be returned to the issuing financial institution, provided the financial institution provides the Department of Revenue with a written notice sixty (60) days prior to the cancellation date. Cancellation shall not affect any liability incurred or accrued prior to the termination of the sixty- (60-) day period.

(D) If an assignment of certificate of deposit is replaced by a different type of financial assurance instrument, the taxpayer may file a request with the Department of Revenue asking to assign and transfer the certificate of deposit back to the taxpayer. If the taxpayer has filed such a request and all of the taxpayer's taxes due are paid, the Department of Revenue will assign and transfer the certificate of deposit back to the taxpayer. The taxpayer must pay, and will solely be responsible for any fees, penalties, charges, or liability arising from any assignment and transfer of the certificate of deposit to or from the taxpayer.

(7) Exemptions from the Out-of-State Transient Employer Financial Assurance Instrument Requirement. Employers meeting all the criteria in section 285.230.2, RSMo, are not required to file a transient employer withholding tax financial assurance instrument.

(8) Certification of Workers' Compensation Insurance. Every transient employer shall certify to the director of revenue that the employer has sufficient Workers' Compensation insurance either through a self-insurance program or policy of workers' compensation insurance issued by an approved workers' compensation carrier. A transient employer shall provide the Department of Revenue with a copy of its Workers' Compensation insurance policy **or completed insurance certification document indicating Missouri as a covered state for Workers' Compensation,** to be verified consistent with section 285.234.1(2), RSMo.

(9) The forms Surety Bond Form 331, Cash Bond Form 332, Irrevocable Letter of Credit Form 2879, and the Assignment of Certificate of Deposit Form 4172 are incorporated by reference and made a part of this rule as published by Missouri Department of Revenue **as revised December 2024, January 2024, February 2026, and February 2026, respectively***[, and]***. They are** available at www.dor.mo.gov or Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO 65101*[, dated June 1, 2023]*. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: section 136.120, RSMo 2016. Original rule filed Aug. 8, 1989, effective Nov. 26, 1989. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995. Amended: Filed July 13, 2023, effective Feb. 29, 2024. Amended: Filed Sept. 10, 2026.*

**Original authority: 136.120, RSMo 2016.*

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 amendment with the Missouri Department of Revenue, General Counsel's Office, 301 West High Street, Room 670, 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.*