Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 104—Sales/Use Tax—Registration

Proposed Amendment

12 CSR 10-104.030 Filing Requirements as defined in Section 144, RSMo. This rule is amending sections (3) and (4).

PURPOSE: This rule is updated per statutory changes regarding the guidance for determining a taxpayer's filing frequency and the taxpayer's obligation to file a return and remit tax on the due date according to sections 144.080, 144.081, 144.090, 144.100, 144.140, 144.160, 144.170, and 144.250, RSMo.

(3) Basic Application.

(A) Every licensed taxpayer must file a return and remit tax due **as provided in paragraph (3)(C)***[by the statutory due Date]*. The taxpayer must file a return even if no sales were made during the reporting period. The taxpayer is responsible for obtaining the necessary forms for filing. Failure to obtain tax forms does not relieve the taxpayer from filing.

(B) The taxpayer's filing frequency is determined by the amount of state sales tax collected by the taxpayer for all business locations during the previous calendar year. The filing frequency of a new business is based on the estimated taxable sales for the first year of operation. Local, conservation, or parks and soils taxes are not considered in determining filing frequency.

1. If state tax collections equal or exceed five hundred dollars ($500) per calendar month, the taxpayer must file and remit taxes on a monthly basis.
2. If state tax collections are less than five hundred dollars ($500) per calendar month but equal or exceed *[one]* **two** hundred dollars ($*[1]***2**00) in a calendar quarter, the taxpayer must file and remit taxes on a quarterly basis.
3. If state tax collections are less than *[one]* **two** hundred dollars ($*[1]***2**00) per quarter, the taxpayer must file and remit taxes on an annual basis.

(C) A monthly return is due on the *[twentieth]* **last** day of the following month *[, except for the last month of a quarter]*. A quarterly return *[and a monthly return]* filed for the last month of a quarter is due on the last day of the following month. An annual return is due on January 31 following the calendar year. If the due date falls on a Saturday, Sunday, or state of Missouri holiday the return is due on the next business day.

(D) The United States Postal Service postmark date determines the date the return is filed. If the postmark date is on or before the due date, it is timely. If the postmark is after the due date, the return is late. If a return contains both a taxpayer's metered postal impression and the U.S. Postal Service postmark, the date of the U.S. Postal Service postmark date determines the date the return is filed. If the return is mailed by registered mail, the date of registration determines the date the return is filed.

(E) A taxpayer filing a return and remitting the tax due on or before the due date is permitted a two percent (2%) timely payment allowance.

(F) A taxpayer failing to file a return by the due date will be assessed additions to tax of five percent (5%) on the unpaid amount for each month a return is late, up to a maximum of twenty-five percent (25%). A taxpayer failing to pay a return by the due date will be assessed additions of five percent (5%) on the unpaid amount. If a taxpayer both fails to timely file and fails to timely pay, the additions for failing to timely file applies. A taxpayer that fails to pay the proper amount of tax by the due date must pay interest on the unpaid amount at a rate determined pursuant to section 32.065, RSMo.

(G) The department may extend the time to file or pay a return for up to sixty (60) days. In order to obtain an extension, the taxpayer must obtain approval from the department prior to the date due. Extensions will only be granted for good cause. If the department approves an extension to file or pay, the taxpayer is not permitted a two percent (2%) timely payment allowance. Interest also accrues on any amount not paid by the due date.

(H) The department may require a taxpayer to remit state tax on a quarter-monthly basis if the taxpayer's state tax is fifteen thousand dollars ($15,000) or more per month in each of at least six (6) months of the prior twelve (12) months. A quarter-monthly taxpayer must remit the tax within three (3) banking days after the end of each quarter-monthly period. The postmark date or registration date of the remittance will determine timeliness of the quarter-monthly payment. A quarter-monthly taxpayer must file a monthly return and remit any unpaid amounts.

(I) A taxpayer failing to remit a quarter-monthly payment is assessed a five percent (5%) penalty on the underpayment. A penalty will not be assessed if the quarter-monthly remittances are at least:

1. Ninety percent (90%) of the state tax due for the month; or
2. Twenty-five percent (25%) of the average monthly state tax liability of the taxpayer for the previous calendar year. The department excludes the highest and lowest monthly liability when calculating the average monthly liability.

(J) If a penalty is due, the underpayment amount is calculated as the difference between any timely remittance and the lesser of the two (2) amounts above. The penalty will not be imposed in the first two (2) months the seller is obligated to remit quarter-monthly tax or if the taxpayer can demonstrate reasonable cause.

(4) Examples.

(A) A taxpayer's average monthly taxable sales are $15,000. The taxpayer's filing frequency is monthly because state tax collections computed as follows exceeds $500 per calendar month—$15,000 × 4% (state rate) = $600. Note: Local, conservation, or parks and soils taxes are not considered in determining filing frequency.

(B) A taxpayer prepares its February return on March *[20]* **31** and calculates tax due at $25,000. When preparing the return the taxpayer takes the 2% timely payment allowance equaling $500. The postal carrier picks up the return and payment on its last run of the day at 5:00. The post office postmarks all mail from its 5:00 pick-up for the next day. Because the return is postmarked on *[March 21]* **April 1**, the return is 1 day late. The taxpayer loses the 2% timely payment allowance. The $25,000 is subject to 5% additions to tax. Interest accrues on $500 until it is paid to the department.

(C) A taxpayer prepares its February return on March *[19]* **31**. When preparing the return the taxpayer takes the 2% timely payment allowance equaling $500. The taxpayer sends the return and payment to its mailroom for metering. The taxpayer's mailroom meters the envelope on March **31** *[20]*. The postal carrier picks up the return on its last run of the day at 5:00. The post office postmarks all mail from its 5:00 pick-up for the next day. Because U.S. Postal Service's postmark is *[March 21]* **April 1**, the return is 1 day late.

(D) A taxpayer sends a check for its February tax on March 10. The taxpayer discovers it sent the check without the return and mails the return on April 30. The taxpayer retains its 2% allowance because payment was received before the due date.

(E) A business' average monthly state tax for the previous calendar year equals $20,000. The estimated quarter-monthly payment is $5,000 per quarter-monthly period. The business' actual state tax collections are $6,000 per quarter-monthly period. If the business remits quarter-monthly payments of $5,000 timely, no penalty is charged. If the business underpays 1 of the estimated quarter-monthly payments by $2,000 (it remits $3,000), the penalty is 5% of the difference between the amount paid, $3,000, and the estimate, $5,000. The penalty is calculated as follows: $5,000 – $3,000 = $2,000 × 5% penalty = $100.

(F) A business elects to make quarter-monthly payments on an actual basis. If the business pays at least 90% of the state tax collections for the month with the quarter-monthly payments, no penalty is charged. If the business does not meet the required 90% state tax collections for the month with the quarter-monthly payments, the penalty is 5% of the difference between the amount paid and the required 90% state tax collections.

AUTHORITY: section 144.270, RSMo Supp. 2012, and section 144.705, RSMo 2000. Original rule filed June 29, 2000, effective Dec. 30, 2000. Amended: Filed Jan. 15, 2013, effective July 30, 2013.*

**Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961, 2008 and 144.705, RSMo 1959.*

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

PRIVATE COST: This proposed rule 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.*