

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

PROPOSED AMENDMENT

12 CSR 10-110.220 Hotels and Motels. The department is amending the purpose statement, adding subsections (3)(H)-(M) and (4)(D)-€, and updating the authority

PURPOSE: The rule is being updated to provide more examples of when tax is owed.

*PURPOSE: This rule explains the taxability of rooms, meals and drinks provided by hotels, motels, and similar establishments in which these items are regularly provided to the public. It also covers purchases made by these establishments. The applicable sections are 144.010, 144.011, **144.018**, 144.020, 144.021, 144.030 and 144.080, RSMo.*

(1) In general, sales or charges for rooms, meals or drinks at a place that regularly serves the public are taxable.

(2) Definitions. Permanent resident—An individual who contracts in advance for a room for a period of thirty consecutive days or more and who actually remains a guest for thirty consecutive days or more. Businesses do not qualify as permanent residents.

(3) Basic Application of the Tax.

(A) Charges for rooms, meals, and drinks furnished by hotels, restaurants, and other establishments, in which rooms, meals, or drinks are regularly served to the public, are taxable. Rooms for lodging as well as meeting, banquet and conference rooms are taxable.

(B) A permanent resident is not subject to tax on their lease or rental payments. A permanent reservation for any room is not synonymous with permanent resident.

(C) An educational institution, which furnishes room and board to students in pursuit of their educational objectives, is not subject to tax on the gross receipts.

(D) Persons engaged in providing rooms are subject to tax on the gross receipts from the sale of tangible personal property and taxable services:

1. Receipts for food or drink are taxable regardless of whether the charge is made per meal, daily, weekly, or monthly;
2. In room pay-per-view programs or movies are not subject to tax; and
3. All persons engaged in providing rooms must collect tax on all charges for telecommunication services, including intrastate and interstate calls.

(E) Rooms, meals and drinks are exempt from tax if sold to an exempt organization or a representative of that organization if the seller has documentation of the exemption. If the representative claims the exemption, even if the representative pays with his own funds and is reimbursed, and the hotel has a copy of a valid exemption letter issued by the Missouri Department of Revenue to the organization, the sale is exempt. An agent of the United States government paying with a U.S. government credit card is also exempt.

(F) Persons providing complimentary meals and drinks or non-reusable tangible personal property as part of the room accommodation should not pay tax on the purchases. Non-reusable items include soap, shampoo, tissue, and food or confectionery items offered to the guests without charge.

(G) The purchaser must pay tax on the purchase of reusable items including furniture, curtains, linens, towels, pillows, mirrors, radios and televisions for room accommodation.

(H) Fees charged for items such as roll-away beds, additional person in room, no show fees, early departure fee, pet fee, deposit when the facility retains the deposit, cancellation fee (if the fee is compensatory in nature), lockout fees, fax fees, telephone charges, and athletic facility fees are subject to tax.

(I) Fees charged for shuttle or transportation, parking, laundry, faxing documents, cancellation fees (minimal and non-compensatory), cleaning charges, damage fees, internet charges, return check fees, and pay per view charges are not subject to tax.

(J) Retail sales of items from a gift shop, newsstands, minibar, or pantry are subject to tax.

(K) Vending machines sales are subject to tax at one hundred thirty-five percent (135%) of the net invoice price of the items vended. Food items that are sold through vending machines are subject to tax at 135% of the net invoice price at the reduced food tax rate.

(L) A hotel's purchases of utilities such as electricity, water, and gas are exempt to the extent that the utilities are used to provide water or power to sleeping rooms, meeting and banquet rooms, or other space rented by guests where a charge is made to the guest. Any remaining portion of these utilities consumed by the business is taxable.

(M) Hotels that sell rooms, meals, or drinks at fair market value to an unaffiliated entity for resale must collect and remit sales tax on those charges. The subsequent resale of the rooms, meals or drinks by the unaffiliated entity is not subject to sales tax.

(4) Examples.

(A) A hotel rents a room to a guest for a night. The soap and shampoo are included in the price of the room and may be purchased tax exempt by the hotel under a resale exemption. The complimentary breakfast provided to the guest is also included in the

price of the room, and the hotel may purchase the food under a resale exemption. The towels, bed linens and furniture are subject to tax at the time of purchase.

(B) A hotel provides a complimentary room for a couple's wedding night. The hotel includes a free bottle of champagne and a free breakfast. The hotel must pay tax on the cost of the champagne and the breakfast because the hotel did not charge for the room.

(C) An airline reserves rooms at a hotel under a long-term room contract. In exchange for room availability, the airline agrees to pay for all rooms on a guaranteed basis, whether or not it uses the rooms. The entire charge for the rooms is taxable, regardless of whether the rooms are actually used.

(D) A hotel has a vending machine which sells items such as toothbrushes, toothpaste, shampoo, soap, etc. The hotel is to remit tax on one hundred thirty-five percent (135%) of the net invoice price of the items vended.

(E) A hotel uses a third party sales platform to solicit sales at a fair market value. The sales the hotel makes to the third party sales platform are subject to sales tax. The subsequent sale made by the third party platform is not subject to tax.

AUTHORITY: section 144.270, RSMo [1994] 2016. Original rule filed June 13, 2000, effective Dec. 30, 2000. Amended: Filed September 10, 2026.*

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

***Drury Supply Co., et al v. Director of Revenue**, (A.H.C. 1996). The Commission found that the "sale for resale" exclusion applies to the sale of a taxable service and, therefore, the purchases of the tangible personal property used to provide "free" breakfast[s] and the guest consumables were not subject to Missouri taxes. It further found that the guest room supplies (towels, bed linens, waste baskets and other items placed in the rooms for the guests' use) were property used and consumed by the hotel/motel to provide the service to the guests and ownership of the property was not transferred to the guests. Therefore, the purchases of the guest room supplies were subject to tax. The Commission also found that the taxpayer had accepted exemption certificates from exempt entities in good faith. Therefore, the sales of room services to [persons] **people** representing the exempt entities were exempt from tax even though payment did not come directly from the exempt entities. Finally, the Commission found that the taxpayer's charge to the customer for telecommunications services was taxable.*

***HBE Corp. v. Director of Revenue**, (A.H.C. 1992). The hotel marked up the charges for guest phone calls over the rate paid to its supplier. The Commission ruled the hotel "sold" telephone services to "others," its hotel guests. Where a retail sale occurs between a Missouri buyer and Missouri seller, the exemption for interstate commerce does not apply. See, *Bratton Corp. v. Director of Revenue*, 783 S.W.2d 891 (Mo banc 1990). Even though the sale involved the transmission of telephone message to a recipient located in another state, it was not exempt as a sale in commerce.*

The Hotel Majestic (Majestic Associates) v. Director of Revenue, (A.H.C. 1989). A Missouri limited partnership that owned and operated a hotel was properly denied a sales tax refund on certain payments it received under a long-term room reservation rental agreement. The hotel agreed to reserve between 10 and 20 rooms per day for the use and convenience of a public utility. Any reserved room that was not taken by a guest of the utility prior to 6:00 p.m. daily could be let by the hotel to the general public for that night. In exchange for making reserved rooms available, the utility agreed to pay for all the rooms on a monthly basis, whether it used them or not, with the exception of reserved rooms let to other patrons.

National Land Management, Inc., v. Director of Revenue, (A.H.C. 1984). The Commission found that receipts from time sharing arrangements at resorts are not taxable. The payments in question did not constitute charges for rooms furnished in any hotel, motel, inn, tourist camp or tourist cabin. Because the time-shares include a thirty-year lease, the occupants are not transitory in the sense that travelers or tourists are. Rooms in taxpayer's resort are not regularly rented because they are only open to the general public when they are not already reserved.

Chase Hotel, Inc, v. Director of Revenue, (A.H.C. 1982). The taxpayer's purchase of furnishings for use in its hotel was not a "sale for resale" because the hotel was the ultimate consumer of the materials purchased for its renovation program.

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, Legislative Office, 301 West 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.*