

**TITLE 12 – DEPARTMENT OF REVENUE**  
**Division 10 – Director of Revenue**  
**Chapter 113 – Sales/Use Tax – Use Tax**

**PROPOSED AMENDMENT**

**12 CSR 10-113.200 Determining Whether a Transaction is Subject to Sales Tax or Use Tax.**  
The department is amending sections (1), (2), (3),(4), the purpose statement and case references.

*PURPOSE: The rule is being updated to address the issue of merchandise shipped from a third party.*

*PURPOSE: Chapter 144, RSMo, contains the statutory provisions governing application of sales and use tax. This rule explains how to determine whether a transaction is subject to sales tax or use tax. This rule also explains what transactions are exempt from sales tax under the interstate commerce exemption in section 144.030[.1], RSMo.*

(1) In general, a sale of tangible personal property is subject to sales tax if title to or ownership of the property transfers in Missouri unless the transaction is in commerce. **The significance of “in commerce” is that title transfer in Missouri is a necessary condition, but not a sufficient condition for a sale to be subject to sales tax, as opposed to use tax.** The seller must collect and remit the sales tax. If a sale is not subject to Missouri sales tax but the property is stored, used, or consumed in Missouri, the transaction is subject to use tax. If the transaction is subject to use tax and the seller has nexus with Missouri, the seller must collect the tax at the time of the sale and remit it to the department. If the seller does not collect the tax, the buyer must pay use tax directly to the department. If a sale of tangible personal property is not subject to Missouri sales tax and the property is not stored, used, or consumed in this state, no Missouri tax is due. A sale of a taxable service is subject to sales tax if the service is performed in Missouri. If the service is not performed in Missouri, the sale is not subject to tax.

(2) Definition of Terms.

(A) Nexus—contact with the state.

(B) In commerce—a transaction is in commerce if the order is approved outside Missouri and the tangible personal property is shipped from outside Missouri directly to the buyer in Missouri. **However, a transaction is not in commerce if the merchandise is shipped to the final customer from a third-party seller, other than the retail seller. Additionally, a transaction is not in commerce if the vendor does more than merely deliver the merchandise to customer’s designated location. Examples of this additional work would include, but not limited to setting up, assembling, or testing the product at the customer’s location.**

### (3) Basic Application of Taxes.

(A) Title transfers when the seller completes its obligations regarding physical delivery of the property, unless the seller and buyer expressly agree that title transfers at a different time. A recital by the seller and buyer regarding transfer of title is not the only evidence of when title passes. The key is the intent of the parties, as evidenced by all relevant facts, including custom or usage of trade.

(B) Unless otherwise agreed by the parties, when a Missouri seller delivers tangible personal property to a third-party common or contract carrier for delivery to an out-of-state location, title does not transfer in Missouri and the sale is not subject to Missouri sales tax. A buyer that carries its own goods is not acting as a common or contract carrier.

(C) When an out-of-state seller **approves the order out of state and** delivers tangible personal property to a third-party common or contract carrier for delivery to Missouri, title transfers in Missouri **and this transaction is in commerce and subject to use tax. When an out-of-state seller approves the order from an in-state location and delivers tangible personal property to a third-party common or contract carrier for delivery to Missouri, title transfers in Missouri and this transaction is not in commerce and is subject to sales tax.** If delivery is made to seller or an agent of seller (other than a third-party common or contract carrier) in Missouri and subsequently delivered to the buyer in Missouri, the sale is subject to Missouri sales tax. *[If delivery is made directly from the out of-state seller to the buyer in Missouri, the sale is subject to sales tax if the order was approved in Missouri. If the order was approved outside Missouri, the sale is not subject to sales tax, but the transaction is subject to use tax unless otherwise exempt.]*

(D) Leases of tangible personal property generally follow the same taxing guidelines as sales of tangible personal property. Leases of tangible personal property by Missouri lessors are subject to sales tax if the lessee obtains possession in Missouri. Leases of tangible personal property by non-Missouri lessors are subject to Missouri sales tax if the **lessee obtains possession of the tangible personal property [is located in Missouri] in Missouri** prior to *[entering the lease and the lessee obtains possession in Missouri]* **the commencement of the lease stream.** Leases of tangible personal property that are not subject to sales tax are subject to use tax if the lessee stores, uses, or consumes the tangible personal property in Missouri.

### (4) Examples.

(A) A seller accepts orders in Missouri. The seller fills orders from its warehouses located both within and without Missouri. A customer orders goods from the seller in Missouri. The order is filled from an out-of-state warehouse and shipped directly to the customer. The transactions are subject to sales tax because the order is accepted in Missouri.

(B) A customer purchases custom fabricated goods from a Missouri seller. The order for the goods must be approved at the seller's out-of-state headquarters. The goods will be shipped by the seller directly from the out-of-state facility to the customer's Missouri location. The sale is

subject to use tax because the order was approved out-of-state and the goods were shipped from out-of-state directly to the customer in Missouri. The seller must collect and remit the use tax.

(C) A Missouri seller sells pens, calendars, cups and similar items with the customer's logo printed on them. The seller sends the orders to an out-of-state supplier to custom print the items that are drop shipped directly to the customer in Missouri. The sale is subject to sales tax because the customer's order taken by the seller is approved in Missouri.

(D) While visiting Missouri, an Illinois resident purchases a set of luggage at a Missouri department store. The buyer requests the seller to ship the luggage to an Illinois address. The sale is not subject to Missouri sales or use tax because title does not transfer in Missouri.

(E) An out-of-state customer purchases a kitchen table set from a Missouri seller. Under the terms of the sale, the seller is to ship the set to a Missouri location for storage until the customer is able to arrange to pick up the set with its truck or by third-party carrier. The sale is subject to sales tax.

(F) An Illinois construction contractor leases a backhoe from an Illinois lessor. Prior to entering the lease, the backhoe was located in Missouri. The contractor takes possession of the backhoe at the Missouri location. The lease is subject to sales tax.

**(G) An Iowa rental company rents construction equipment. A Missouri construction company will rent a piece of equipment for a month. The equipment is shipped to the Missouri customer which is inspected by the Missouri customer. Once it is determined the equipment is in proper working condition the rental stream begins. The rental is subject to Missouri sales tax as the equipment was in this state prior to the rental agreement beginning.**

**(H) A Missouri construction company leases numerous forklifts from an Illinois lessor. The lease is entered, and the first payment is made prior to the equipment being sent to Missouri. Forklifts have been sent to Missouri customer. The lease is subject to vendors use tax.**

*[(G)]* **(I)** A seller has no place of business in Missouri. A sales representative who works from a non-Missouri location visits Missouri customers. All orders are accepted outside Missouri and goods are shipped to Missouri customers from outside the state. The seller must collect and remit use tax.

*[(H)]* **(J)** A seller has a location in Missouri. A Missouri customer places an order directly with the seller's non-Missouri location via email. The goods are shipped directly to the Missouri customer from the non-Missouri location. The Missouri office does not participate in the sale. The seller must collect and remit use tax.

*[(I)]* **(K)** An out-of-state vendor markets tangible personal property to Missouri residents via online and televised advertisements. The vendor does not own the items it markets. Instead, the vendor contracts with a third-party supplier to maintain and ship items purchased from its online and televised advertisements. A Missouri resident purchases a marketed item. Vendor instructs

the third-party supplier to ship the purchased item to the Missouri resident. The third-party supplier ships the item via common carrier to the Missouri resident. Title transfers from the third-party supplier to vendor in Missouri at the Missouri resident's home. Title then transfers from the vendor to the Missouri resident. The vendor must collect and remit sales tax.

*AUTHORITY: sections 144.270 and 144.705, RSMo 2016.\* Original rule filed Jan. 10, 2002, effective July 30, 2002. Amended: Filed Jan. 10, 2023, effective July 30, 2023. Amended: Filed May 11, 2026.*

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

*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.*

***Bratton Corp. v. Director of Revenue**, 783S.W.2d 891 (Mo. banc 1990). Goods delivered to a contractor in Missouri upon purchase from a Missouri vendor were not in commerce even though the taxpayer purchased the goods in contemplation of fulfilling an existing out of state construction job.*

***May Department Stores Co. v. Director of Revenue**, 748 S.W.2d 174 (Mo. banc 1988). Taxpayer's customers in Missouri directed taxpayer to make delivery in another state, by mail or by common carrier. The court held that when a contract of sale requires the seller to make delivery, title to the goods does not pass until delivery is made based upon the U.C.C., Section 400.2-401. When a customer makes a purchase at a store in Missouri and the seller agrees to effect delivery in another state, title does not pass in Missouri. Therefore, the sales transactions were not subject to Missouri sales tax.*

***Lynn v. Director of Revenue**, 689 S.W.2d 45 (Mo. banc 1985). Taxpayer conducted boat excursions on the Missouri River. The vessel traversed into Kansas waters, but the passengers embarked and disembarked from Missouri, and all admission fees were collected in Missouri. The court held that the fees were subject to sales tax and were not exempt under section 144.030.1, RSMo, as in commerce.*

***Overland Steel, Inc. v. Director of Revenue**, 647 S.W.2d 535 (Mo. banc 1983). Taxpayer was both a retailer and a contractor. Taxpayer purchased materials, which were ultimately installed,*

*for Kansas customers. These materials were not resold by taxpayer but were consumed in its capacity as contractor. The sale of materials from the manufacturer to taxpayer was completed in Missouri and the sales were taxable. There was no evidence indicating transportation of the goods to Kansas was an integral part of the sale.*

***Western Trailer Service, Inc. v. LePage***, 575 S.W.2d 173 (Mo. banc 1978). Taxpayer, located in Kansas City, Missouri, was engaged in the business of repairing and servicing commercial truck trailers. Taxpayer serviced trailers for a Kansas company where taxpayer went to Kansas, picked up the trailers and brought the trailers back to its business location in Kansas City. After the repairs were made and repair parts installed, the contract required taxpayer to return the trailers to its customer in Kansas. The court held that there was dealing between persons of different states in which importation was an essential feature or formed a component part of the transaction. Therefore, the retail sales were made in commerce between Missouri and Kansas, and the exemption in section 144.030.1, RSMo, applied.

***American Bridge Co. v. Smith***, 179 S.W.2d 12 (Mo. 1944). Missourians ordered goods from out-of-state vendors. The orders were accepted out-of-state and the goods shipped into Missouri from out-of-state, FOB Missouri. The court held that such transactions were exempt from Missouri sales tax under section 144.030.1, RSMo, although not immune from the tax under the Federal Commerce Clause.

***Metro Crown International, Inc. v. Director of Revenue*** (AHC 1990). Taxpayer made sales of aircraft tow tractor parts to airlines located outside Missouri operating as common carriers. The Commission concluded that the economic reality of the transaction was that the seller, the buyer and the place of the seller's taking possession of the goods were all in Missouri and that these were Missouri retail sales.

***John Fabick Tractor Co. v. Director of Revenue*** (AHC 1996). When possession of leased equipment is transferred in Missouri, the lease is consummated at the place of business of the lessor. The monthly lease payments are subject to state and local sales tax regardless of whether the lessee subsequently moves the leased property to another taxing jurisdiction or even out of state.

***Shell Oil Co, v. Director of Revenue***, 732 S.W. 2d 197 (Mo. banc 1987). A company with its principal office in Houston, Texas sold aviation fuel to several airlines which operated out of St. Louis Lambert Airport. At Lambert Field the fuel passed through a meter owned by a third party, Amoco Oil, when it was sold to the airlines. Because the entire transaction took place at that location, and title passed to the airlines upon delivery, the sales were subject to Missouri Sales Tax, plus the applicable St. Louis County Local Sales Tax.