

**Title 12 – Department of Revenue
Division 10 – Director of Revenue
Chapter 101 – Sales/Use Tax - Nature of Tax**

PROPOSED AMENDMENT

12 CSR 10-101.500 Burden of Proof. *The division is amending sections (3) and (4).*

PURPOSE: The purpose of the amendment is to clarify and add examples.

(3) Basic Application of Burden of Proof.

(A) The [department] **director** always has the burden of proof regarding--

1. Whether the taxpayer has been guilty of fraud with attempt to evade tax; and
2. Whether the taxpayer is liable as the transferee of property of another taxpayer.

(B) The taxpayer always has the burden of proof on any issue with respect to the applicability of any tax [exemption or] credit.

(C) The taxpayer has the burden of proof on all other issues unless--

1. The taxpayer has produced **sufficient** evidence establishing there is a reasonable dispute with respect to the issue; **and**
2. The taxpayer has adequate records of its transactions and provides the department of revenue reasonable access to these records.

[3. In the case of a partnership, corporation or trust, the net worth of the taxpayer does not exceed seven (7) million dollars and the taxpayer does not have more than five hundred (500) employees at the time the final decision of the director of the Department of Revenue is issued; and]

*[4.]***3.** If [all three (3)]**both** conditions are met, the [department] **director** has the burden of proof with respect to any factual issue relevant to ascertaining the liability of a taxpayer.

(D) A taxpayer can generally meet its burden of proof **that a sale of tangible personal property, services, substances, or things was not a taxable sale at retail** by obtaining and maintaining **an** exemption certificate[s] signed by the purchaser or its agent. An exemption certificate that is not obtained in good faith, however, will not satisfy the burden of proof. Even when a taxpayer does not have a valid exemption certificate, it may prove that the transaction is exempt from sales and use tax by proof admissible under the applicable rules of evidence.

(4) Examples.

(A) The [department] **director** alleges that a taxpayer **fraudulently** fabricated exemption certificates in order to evade sales tax. The [department] **director** has the burden of proof.

(B) **A person is a donee, heir, legatee, devisee, or distributee of a taxpayer that owes sales tax. The director issues assessments to this person as a transferee. The director has the burden of proof to show the person is a transferee of the delinquent taxpayer. [A taxpayer is assessed unpaid sales tax after it purchases a**

bakery business with baking equipment from another taxpayer who had outstanding sales tax liabilities when it sold its business. The director has the burden of proof.]

(C)*(B) The* **An audited taxpayer [sells] is assessed unpaid sales tax on unreported sales of meals it provided to customers. The taxpayer has the burden of proof to supply the applicable documentation that it correctly collected and remitted sales tax on the meals provided to its customers. [tangible personal property and claims that the sale was exempt from tax. The taxpayer always has the burden of proof.] **If the taxpayer had adequate records and provided those to the department during the audit, and later produces evidence establishing that the unreported sales of meals were to non-profit customers that presented exemption certificates to the taxpayer at the time of sale, the burden of proof then shifts to the director provided the exemption certificates were received in good faith.****

(D) **An out-of-state vendor registered to collect use tax is assessed use tax on the sale of a computer to a Missouri customer. The vendor has the burden of proof to supply the applicable documentation that it correctly collected and remitted use tax on the sales of tangible personal property. If the vendor had adequate records and provided those to the department, the burden of proof then shifts to the director.**

(E) **A taxpayer is assessed use tax on its purchase of a wood lathe that it purchased out-of-state. The taxpayer has the burden of proof to supply the applicable documentation that it purchased tangible personal **property that was exempt from sales or use tax.** If the taxpayer has adequate records which it made available to the department and produces evidence that the lathe is used to manufacture furniture later sold for ultimate use or consumption, the burden of proof then shifts to the director.**

*[(C)]***(F)** **[The] A taxpayer sells tangible personal property and claims that it was a sale for resale. The taxpayer presents a valid resale exemption certificate that was accepted in good faith. The taxpayer has met its burden of proof.**

*[(D)]***(G)** **A jeweler sells an expensive diamond ring to his neighbor, known to the taxpayer not to be in the jewelry business. The neighbor presents an exemption certificate claiming that the ring was purchased for resale and therefore exempt from tax. The jeweler may not accept the exemption certificate without further inquiry.**

*[(E)]***(H)** **A jeweler sells an expensive diamond ring to a purchaser unknown to the jeweler but does not receive an exemption certificate. [On a claim that this was an exempt sale for resale] If the jeweler fails to collect and remit tax, upon assessment by the director the jeweler has the burden of proof and may prove that the sale was exempt through testimony and documents admissible under the rules of evidence.**

*[(F)]***(I)** **A jeweler sells an expensive diamond ring to a purchaser unknown to the jeweler but does not receive an exemption certificate. The jeweler presents to the department an invoice for the diamond ring showing it was sold to a wholesale jeweler. The burden of proof shifts to the [department, unless the jeweler is a partnership, corporation or trust with a net worth of more than seven (7) million dollars or with more than five (500) hundred employees.] director.**

AUTHORITY: section 144.270, RSMo [1994] 2016. Original rule filed Nov. 18, 1999, effective June 30, 2000. Amended: Filed Oct. 2, 2018.

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, PO Box 475, 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.*