

**Title 12 – Department of Revenue
Division 10 – Director of Revenue
Chapter [3] 103– [State Sales Tax]
Sales/Use Tax—Imposition of Tax**

PROPOSED AMENDMENT

12 CSR 10-[3]103.876 Taxation of Sod Businesses. The division is moving the rule, adding a new section (1), and amending and renumbering sections (2)–(11).

PURPOSE: The purpose of the amendment is to move the regulation to a more appropriate chapter and clarify certain details.

(1) In general, the retail sale of sod is a taxable sale of tangible personal property.

[(1)](2) Definition[s] of Terms.

(A) Harvester--any person who severs growing grass from the earth for resale or otherwise as sod.

(B) Installer--any person engaged in the business of purchasing sod from either a sod producer or harvester for resale or use in a contract to improve real property.

(C) Integrated sod producer--any person who grows, harvests, and installs sod under contracts for improvements to real property.

(D) Sod producer--any person engaged in the business of planting and cultivating grass for resale or otherwise as sod.

*[(2)](3) [Transactions Subject to] **Basic Application of Tax.** [Sellers of sod are sellers for purposes of the sales and use tax laws in Chapter 144, RSMo and are subject to the rules applicable to sellers.]*

(A) Sod producers not acting as contractors are **making sales [subject to] at retail and must collect and remit** sales tax *[on their sales of sod to any purchaser]* unless the *[sod producers receive from the]* purchaser **provides** an exemption certificate for resale or otherwise.

(B) Harvesters who purchase sod for resale from sod producers are subject to sales tax on their sales of sod to any purchaser unless the *[harvester receives from the]* purchaser **provides** an exemption certificate for resale or otherwise.

(C) Installers who purchase sod to improve real property in their capacity as contractors[,] **or** subcontractors *[or the like are subject to]* **must pay sales or use** tax on their purchases of sod. *[Under the sales tax law, the person]* **A contractor [who]** incorporate[es]ing tangible personal property into real property as part of an improvement to real property is deemed to be the final user and consumer and must pay tax on *[his/her]* **its** purchases.

(D) Installers who purchase sod for resale and not in their capacity as contractors, subcontractors, or the like are subject to sales tax on their sales of sod to consumers. Any separately stated charges by the installer for labor to install the sod are *[not]* subject to tax if *[title to the sod passes prior to installation]* **the installation charges are**

part of the sale of the sod. The installer should furnish a certificate of exemption for resale to his/her sod supplier for these transactions.

[(3)](4) Amounts Subject to Tax. Sales of sod by sod producers, harvesters, or other retail sellers are subject to tax upon total gross receipts. If the sale of the sod includes delivery and handling charges, the delivery charges are *[taxable if title to the sod passes at the destination point. If title passes at shipping point, the delivery and handling charges are not taxable if they are separately stated to the purchaser (see 12 CSR 10-3.066)]* **not subject to tax if they are usual and customary. Charges for installation are subject to tax if the sod is being sold at retail and the installation is part of the sale of the sod.**

[(4)](5) Related Exemptions to Sales Tax.

(A) *[Retail sales to o]* Organizations exempt pursuant to section 144.030.2(19), (20) and (22), RSMo, including governmental agencies, are exempt from tax *[if]* **and the exempt entity may issue a project exemption certificate to its contractor pursuant to section 144.062, RSMo.** *[purchases are billed to and paid by the exempt entity and not by the contractor.]* **If such a certificate is issued, the contractor may present this certificate upon purchase of the sod.**

(B) Seed, lime, and fertilizer purchased by sod producers are exempt from sales tax if the sod is ultimately sold at retail.

(C) Purchases of machinery and equipment by sod producers are exempt if the sod is grown to be sold ultimately at retail **and the machinery and equipment is exclusively used for agricultural purposes.**

(D) Purchases of seed, fertilizer, and limestone are not exempt if the sod is grown for use by an integrated producer in its capacity as a contractor.

[(5)](6) Examples:

(A) The sod producer grows, harvests, and sells sod to installers. Terms are free on board (FOB) the farm and delivery charges to installers' worksites are separately stated. Producer invoices installer for two thousand (2000) yards of sod at fifty-five cents (55`) per square yard and separately charges fifty dollars (\$50) for delivery. Sales tax is due at the appropriate rate on receipts of one thousand one hundred dollars (\$1100) (2000 55`) **[.];**

[(6)](B) **[Example]** The sod producer sells sod to a harvester who harvests sod and resells the sod to installers. Harvester furnishes sod producer an Exemption for Resale Certificate. Sod producer does not collect sales tax from harvester. Harvester charges sales tax on gross amount of the sales price to this customer. If harvester purchases two thousand (2000) square yards of sod from sod producer at thirty cents (30`) per square yard and sells it to installers for sixty cents (60`) per square yard, sales tax is due on the one thousand two hundred dollars (\$1200) (2000 60`) of receipts. Delivery charges, if *[separately stated]* **usual and customary,** are not taxable **[.];**

[(7)](C) [Example] Installer purchases two thousand (2000) square yards of sod for the farm from sod producer. Installer has agreed with its customer to sell customer sod for fifty-five cents (55¢) per square yard and, **as part of the same transaction**, *[separately]* agreed to install the sod for fifteen cents (15¢) per square yard. The title to the sod passes prior to installation. Installer should provide sod producer with a Certificate of Exemption for Resale and charge sales tax to its customer on one thousand *[one]* **four** hundred dollars (\$1*[1]***400**) at the appropriate rate *[.]*;

[(8)](D) [Example] Installer purchases two thousand (2000) square yards of sod as personal property from producer for thirty cents (30¢) per square yard. Installer contracts separately with a harvester for cutting and delivery of sod for twenty cents (20¢) per square yard. Installer contracts with his/her customer for installation of sod at eighty cents (80¢) per square yard. Producer should collect sales tax from installer at the appropriate rate on six hundred dollars (\$600) (2000 30¢) of receipts *[.]*;

[(9)](E) [Example] An integrated sod producer grows, harvests, and installs two thousand (2000) square yards of sod as part of a contract to improve real property. The contract calls for a price of one dollar (\$1) per square yard of sod installed. The sod grower needs only to pay tax on the seed, fertilizer, and limestone. The two thousand dollar (\$2000) receipts from the installation contract are not taxable *[.]*;

[(10)](F) [Example] An integrated sod producer who normally acts as a contractor occasionally sells sod at retail to homeowners. In these retail sales cases, the integrated operator should charge tax on the gross receipts of the sale to the homeowner and purchase the seed, fertilizer, and limestone tax exempt pursuant to section 144.030.2(1), RSMo *[.]*; **and**

[(11)](G) [Example] An integrated sod producer acting as a contractor is able to have two (2) cuttings of sod with each seeding. The first cutting results from the seeding and the second cutting results from regrowth. The integrated sod producer has no taxable event on those cuttings which are produced from regrowth.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed July 2, 1990, effective Dec. 31, 1990. 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.*