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**Missouri Study Commission on State Tax Policy
Tax Administration Work Group
Testimony of Ray McCarty, President/CEO
August 17, 2016**

The Missouri Department of Revenue (DOR) should file amendments to regulations when the Department's position regarding the taxability of items or transactions changes, not simply notify taxpayers by letter to comply with the provisions of statute. Both processes should be employed.

First of all, we applaud the DOR for sending the required notification letters under the statute when they apparently intend to change the way they view the sales/use taxability of shipping charges. Separately stated shipping and delivery charges have been usually exempt from sales and use taxes for many years.

However, the proper venue for a change of this magnitude is through the rulemaking process. In fact, the DOR had started the regulation process in March, 2015, by publishing on its website a proposed amendment to 12 CSR 10-103.600, "Sales of Tangible Personal Property and Services." This proposed amendment was drafted after the Missouri Supreme Court decision in "Alberici Constructors, Inc. v. Director of Revenue." I have attached a copy to my testimony. The DOR never proceeded to file this amendment to the regulation.

Several weeks ago, the DOR sent letters to many Missouri businesses containing much of the same information that was contained in the draft proposed amendment to the regulation. For this, they should be commended as they are complying with the provisions of section 144.021 requiring the Department to notify taxpayers of changes in the taxability of an item or service.

In this case, however, a regulation should also have been promulgated through the normal regulation process. That process provides an opportunity for written comments and even review by the Joint Committee on Administrative Rules. Through the process, the executive agency may find ways to change their regulation to be more taxpayer-friendly and may explain their position more clearly by showing their responses to any filed comments.

While avoiding the regulation process may have been convenient for the Department, many taxpayers now have questions about the treatment of shipping charges for sales and use tax purposes. In fact, our organization is convening a meeting with Department officials to discuss this topic.

If you or other work group members have any questions, please send them to me at rmccarty@aimo.com or call (573) 634-2246.