

commercial driver] in Missouri or any other state during the ten (10)-year period preceding the application;

(3) For purposes of *[determining] verifying* an applicant's *[eligibility for restoration of commercial driving privileges]* **prior ten (10)-year alcohol and drug history**, the applicant shall provide a copy of his/her **closed** criminal history for the immediately preceding ten (10) years to the director of revenue *[or authorize access to such criminal history by completing DOR-4383, Authorization to Perform Criminal Background Check]*.

(4) If the director finds the applicant is eligible for restoration to commercial driving status, the written and driving skills examinations as specified in 12 CSR 10-24.395 shall be successfully completed before a commercial driver[s] license is issued.

AUTHORITY: sections 302.755, **RSMo Supp. 2006** and 302.765, **RSMo 2000**. Original rule filed Nov. 29, 1995, effective May 30, 1996. Amended: Filed April 11, 2005, effective Oct. 30, 2005. Amended: Filed Aug. 8, 2007.

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, Legal Services Division, Governmental Affairs Bureau, 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.

Title 12—DEPARTMENT OF REVENUE

Division 10—Director of Revenue

Chapter 26—Dealer Licensure

PROPOSED RULE

12 CSR 10-26.200 Out-of-State Dealer Request to Participate in Missouri Recreational Vehicle Show or Exhibit

PURPOSE: Section 301.566, **RSMo**, requires a recreational vehicle (RV) dealer licensed in another state who intends to participate in a RV show or exhibition in Missouri to notify the Department of Revenue at least thirty (30) days prior to the event. This rule establishes the form that must be used to notify the department.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Each licensed out-of-state recreational vehicle (RV) dealer who wants to participate in a vehicle show or exhibition in Missouri must complete a Request For Out-Of-State Dealer Participation In Missouri Recreational Vehicle Show or Exhibit (FORM DOR 5132). The Form DOR 5132 must be received by the Department of Revenue, Customer Service Division, Dealer Licensing Section, PO

Box 43, Jefferson City, MO 65105-0043, at least thirty (30) days before the RV show or exhibit. No other notice may be used.

(A) The Request For Out-Of-State Dealer Participation In Missouri Recreational Vehicle Show Or Exhibit (FORM DOR 5132), revised April 2007, is incorporated by reference, is published by and can be obtained from the Missouri Department of Revenue, Customer Service Division, Dealer Licensing Section, PO Box 43, Jefferson City, MO 65105-0043, or at www.dor.mo.gov/mvdl/motorv/forms/5132.pdf. This form does not include any amendment or addition since the revision date noted.

(B) The department will notify the RV dealer of its decision to approve or deny the request for participation in the RV show or exhibition at least fifteen (15) days prior to the event. If approved, the dealer must keep a copy of the department's approval letter at the show or exhibition for inspection.

AUTHORITY: sections 301.552, **RSMo 2000** and 301.566, **RSMo Supp. 2006**. Original rule filed Aug. 8, 2007.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, 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.

Title 12—DEPARTMENT OF REVENUE

Division 10—Director of Revenue

Chapter 103—Sales/Use Tax—Imposition of Tax

PROPOSED AMENDMENT

12 CSR 10-103.380 Photographers, Photofinishers and Photoengravers, as Defined in Section 144.030, RSMo. The director proposes to amend the title, amend subsections (3)(C), (3)(E), (3)(F), and subsections (4)(D) through (4)(F).

PURPOSE: This rule is being amended due to TAFP HCS SCS SB 196, enacted by the 93rd General Assembly, 2005 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

(3) Basic Application of Tax.

(C) The sale of negative development services only, where no prints, slides or other tangible personal property are received, is not subject to tax. The developer must pay tax on materials and supplies used in the development process **because developing is a service that is not subject to tax.**

(E) *[Supplies such as film, chemicals and other materials purchased for the photographer's own use or consumption are taxable.]* Chemicals that are intended to and do remain with the final product are considered an ingredient or component part of the final product for resale and are therefore not subject to tax.

(F) Equipment such as cameras and lenses, which is directly used to manufacture new **tangible** personal property intended to be sold ultimately at retail, is exempt from tax. Replacement parts for this exempt equipment are also exempt.

(4) Examples.

[(D) A photographer purchases chemicals and other supplies used to develop photographs. These chemicals and

supplies are not intended to remain with the photograph. These purchases are subject to tax because they are consumed in the developing process and do not become a component or ingredient part of the photograph.]

[(E)] (D) A photographer purchased new cameras and a new lens to replace a broken lens. The new cameras allow the photographer to photograph twice as many pictures. The photographer can purchase the cameras exempt because it increases productivity. The new lens would also be exempt as replacement equipment.

[(F)] (E) A photographer scans photographs into a computer for customers. If the photographer provides the customer a CD containing the images, the sale is taxable. However, if the photographer sends the images to customers via the Internet, the photographer has not sold tangible personal property and should not collect tax on this sale.

AUTHORITY: *section 144.270, RSMo [1994] 2000. Original rule filed June 29, 2000, effective Dec. 30, 2000. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.*

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, Legal Services Division, Governmental Affairs Bureau, 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.*

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax**

PROPOSED RULE

12 CSR 10-103.381 Items Used or Consumed by Photographers, Photofinishers and Photoengravers, as Defined in Section 144.054, RSMo

PURPOSE: *Section 144.054.2, RSMo exempts from state sales tax and local use tax, but not local sales tax, machinery, equipment, materials and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing. This rule explains the exemption for photographers, photofinishers and photoengravers.*

(1) In general, purchases of machinery, equipment, materials and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing are exempt from state sales tax and local use tax, but not local sales tax.

(2) Definition of Terms: See the definition of terms in 12 CSR 10-111.010 Machinery and Equipment Exemptions.

(3) Basic Application of Tax.

(A) Supplies such as film, chemicals and other materials purchased for the photographer's use or consumption are exempt from

state sales tax and local use tax, but not local sales tax.

(4) Examples.

(A) A photographer purchases chemicals and other supplies used to develop photographs. These chemicals and supplies are not intended to remain with the photograph. These purchases are exempt from state sales tax and local use tax, but not local sales tax, because they are consumed in the developing process.

AUTHORITY: *section 144.270, RSMo 2000 and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.*

PUBLIC COST: *This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

PRIVATE COST: *This proposed rule 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 rule with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, 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.*

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax**

PROPOSED AMENDMENT

12 CSR 10-103.400 Sales Tax on Vending Machine Sales, as Defined in Section 144.054, RSMo. The director proposes to amend section (1), and subsection (3)(I).

PURPOSE: *This rule is being amended due to TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.*

(1) In general, sales of tangible personal property, other than photocopies and tobacco products, through vending machines are subject to tax based on one hundred thirty-five percent (135%) of the net invoice price of the tangible personal property. The applicable tax rate is the rate in effect at the location of the vending machine. Sales of photocopies and tobacco products are subject to tax on their retail sales price. *[Purchases of machines or parts for machines used in a commercial vending machine business are subject to tax unless tax is paid on the gross receipts derived from the use of the machines.] Purchases of machines or parts for machines used in a commercial vending machine business are not subject to tax if tax is paid on the gross receipts derived from the sale of the tangible personal property through the vending machines.*

(3) Basic Application of Tax.

(I) *[Purchases of machines or parts for machines used in a commercial coin-operated vending business are subject to tax unless tax is paid on the gross receipts derived from the use of the machines.] Purchases of machines or parts for machines used in a commercial vending machine business are not subject to tax if tax is paid on the gross receipts derived from the sale of the tangible personal property through the vending machines.*

AUTHORITY: section [143.961] 144.270, RSMo 2000, and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Original rule filed May 1, 2006, effective Nov. 30, 2006. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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, Legal Services Division, Governmental Affairs Bureau, 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.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax**

PROPOSED AMENDMENT

12 CSR 10-103.555 Determining Taxable Gross Receipts. The director proposes to amend the purpose, sections (2) through (4), and reletter existing subsections accordingly.

PURPOSE: This rule is being amended due to TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

PURPOSE: Section 144.021, RSMo, imposes a tax on a seller's gross receipts. Section 144.083, RSMo, addresses the application of tax involving third party payments. This rule provides guidance for reporting gross receipts.

(2) Definitions.

(A) Buydown payments—payments received by a seller under an agreement with a manufacturer or wholesaler to lower the cost of inventory sold to consumers for a stated sales price.

[(A)] (B) Gross receipts—the total amount of the sale price of taxable services and tangible personal property including any services, other than charges incident to the extension of credit, that are a part of such sale and are capable of being valued in money, whether received in money or otherwise.

[(B)] (C) Rebate—a return of part of an amount given in payment.

(D) Store coupons—coupons issued by the seller to reduce the stated price of a product to the purchaser.

[(C)] (E) Taxable sales—the total amount of gross receipts plus or minus any adjustments permitted or required by law.

(F) Third party coupons—coupons issued by a manufacturer or other third party to apply to the purchase of the product.

(3) Basic Application of Tax.

(C) When the [taxpayer] seller accepts third party coupons, only the [total sale] price [includes the value of the coupon. When the taxpayer accepts third party coupons along with food stamps, the value of the food stamps is not included in taxable sales, but the value of the coupon is included in taxable sales.] paid by the purchaser is included in the gross receipts subject to tax.

(D) The value of a store coupon issued and redeemed by [the] a seller is not [included in taxable sales] subject to tax. Store coupons are not included in gross receipts.

(E) When the seller accepts federal food stamp coupons, the value of the federal food stamp coupons is not included in gross receipts.

[(E)] (F) Rebates from sellers or manufacturers do not reduce taxable sales unless they are offered instantly at the time of sale, except for rebates on motor vehicles, boats, trailers and outboard motors.

[(F)] (G) A taxpayer accepting an article in trade as a credit or part payment on the purchase price should include the value of the article in gross receipts. The value of the article should be deducted from gross receipts when calculating taxable sales.

[(G)] (H) Money received in advance, such as down payments, layaways or gift certificates, are not included in gross receipts until the sale has been consummated.

[(H)] (I) Charges to customers for the extension of credit, such as late fees or financing charges are excluded from gross receipts.

[(I)] (J) A seller's expenses associated with utilizing the service of credit card companies are not excluded from gross receipts.

[(J)] (K) If the taxpayer's inventory is stolen or destroyed by fire or other casualty, the insurance receipts are not subject to tax and should not be included in gross receipts.

(L) When tangible personal property is subject to a federal manufacturer's excise tax imposed by sections 4041, 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261, or 4271 of Title 26, *United States Code*, the amount of the tax is not included in gross receipts if the retail seller collects the excise tax from the purchaser and remits it to the federal government.

(M) Gross receipts from the sale of cigarettes do not include the amount of the sale price that represents the state tax on the cigarettes under Chapter 149, RSMo. Gross receipts from the sale of other tobacco products include the amount of the sale price that represents the state tax on the other tobacco products under Chapter 149, RSMo. Local cigarette taxes authorized by law and imposed and paid in the manner of the state tax under Chapter 149, RSMo, are not included in gross receipts. All other local cigarette taxes are included in gross receipts.

(N) Buydown payments are not gross receipts subject to tax. Buydown payments serve to reduce the sales price to all purchasers by reducing inventory cost to the seller. Buydown payments are not payments for the retail price of the product.

(4) Examples.

(A) A grocery store accepts manufacturer's coupons from its customers on purchases of various goods. The store sells aluminum foil for \$1.50. The customer presents to the store a \$.50 manufacturer's coupon and pays the remaining balance of \$1.00. The store submits the \$.50 coupon to the manufacturer for payment of the \$.50. The gross receipts from the sale of the aluminum foil are [~~\$1.50~~] **\$1.00** and total taxable sales are [~~\$1.50~~] **\$1.00**. Tax should be charged on [~~\$1.50~~] **\$1.00**.

(B) On Tuesdays, the same grocery store in Example (A) doubles all manufacturers' coupons. The store then receives \$.50 from the customer and \$.50 from the manufacturer. Gross receipts are [~~\$1.00~~] **\$.50**, and total taxable sales are [~~\$1.00~~] **\$.50**. Tax should be charged on [~~\$1.00~~] **\$.50**.

(C) An appliance manufacturer offers a \$100 cash rebate on an \$800 refrigerator. [*The store selling the refrigerator should charge tax on \$800.*] Tax is due on [~~\$800~~] **\$700**, [whether] if the rebate is received by the customer at the time of purchase. **If the customer must request the rebate from the manufacturer at [or] a later date[,], tax is due on \$800 because that is the sale price paid at the time of purchase.**

(G) A retailer ordinarily sells a brand of cigarettes for \$4 per pack. The manufacturer of that brand of cigarettes agrees to a "buydown" with the retailer. Under the buydown agreement, the manufacturer will reimburse the retailer \$.50 per pack if the retailer sells the cigarettes for \$3.50 for a month. The gross receipts and taxable sales from the sales of the cigarettes are

\$3.50 per pack, which includes the buydown, less any amount attributable to the state tax imposed pursuant to Chapter 149, RSMo.

(H) A retailer ordinarily sells a brand of cigarettes for \$4 per pack. The manufacturer of that brand of cigarettes agrees with the retailer to reduce the purchase price to the retailer by \$.50 per pack if the retailer sells the cigarettes for \$3.50. The gross receipts from the sales of the cigarettes are \$3.50 per pack, less any amount attributable to the state tax imposed pursuant to Chapter 149, RSMo.

AUTHORITY: section 144.270, RSMo [1994] 2000, and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Original rule filed Aug. 21, 2000, effective Feb. 28, 2001. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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, Legal Services Division, Governmental Affairs Bureau, 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.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 108—Sales/Use Tax—Taxable Services**

PROPOSED RULE

12 CSR 10-108.100 Amusement, Entertainment and Recreation

PURPOSE: Section 144.020.1(2) imposes a tax on amounts paid for admission and fees paid to or in a place of amusement, entertainment and recreation. This rule explains what services are taxable in places of amusement, entertainment or recreation, games and athletic events. This rule also addresses the purchase of amusement devices under section 144.518, RSMo.

(1) In general, tax is imposed on the amount paid for admission to or participation in any place of amusement, entertainment or recreation, games and athletic events. Such amounts are exempt if all the proceeds benefit a political subdivision.

(2) Definitions.

(A) Amusement—a pleasurable diversion or entertainment.

(B) *De minimis*—a minimal or insignificant portion of the business activity. Factors to consider in determining whether amusement, entertainment or recreation, games and athletic events constitute more than a *de minimis* portion of business activity include, but are not limited to:

1. Comparative amounts of revenue or profit;
2. The physical space devoted to the activity at the business location;
3. The way the taxpayer holds itself out to the public; and
4. How the activity is held out to the public.

(C) Equity ownership interest—the right to participate in or direct the distribution of any surplus of the organization upon dissolution.

(D) Place of amusement—a place where, for the period of time for

which an amount is charged, amusement, entertainment or recreation, games and athletic events constitutes more than a *de minimis* portion of the business activity. The term “place of amusement” also includes a location for amusement purposes that is separated from the rest of the business location, even if the rest of the business is not treated as a place of amusement. The term “place of amusement” does not include a location that is separated from the rest of the business location and used for purposes other than amusement, even if the rest of the business is treated as a place of amusement.

(3) Basic Application.

(A) Amounts paid to a place of amusement for admission to or participation in the amusement are taxable. Amounts paid for lessons are not subject to tax.

(B) Amounts paid to obtain, maintain or enhance an equity ownership interest in a place of amusement are not subject to tax. Non-refundable initiation fees and capital assessments paid by a member who does not have an equity ownership interest in the place of amusement are taxable. An equity ownership does not exempt a member from paying tax on other amounts subject to tax under this regulation, including charges for guests.

(C) Regardless of whether tax was paid on the purchase of tangible personal property, if the tangible personal property is an indispensable part of the amusement, any amount paid to participate in such amusement activity is subject to tax. The tax is due whether or not the amounts charged for the tangible personal property and other items are separately stated.

(D) Any amount paid in a place of amusement for optional services that are themselves an amusement, or that facilitate participation in or admission to an amusement, is subject to tax.

(E) Admission tickets to a place of amusement located in Missouri that are sold through other businesses, such as grocery stores and ticket outlets (inside or outside the state of Missouri), are taxed on the gross receipts received by the place of amusement at the rate applicable for the location of the place of amusement. The place of amusement is responsible for reporting all admission ticket sales made through all outlets. Amounts received for admission to a place of amusement by businesses other than the place of amusement (e.g., ticket brokers) are not subject to tax. Mandatory service charges imposed by a place of amusement in addition to the stated ticket price on tickets sold for admission to the place of amusement are subject to sales tax.

(F) Receipts from amusement devices, other than coin-operated amusement devices, are taxable if the devices are located in a place of amusement and tax was not paid on the purchase of the devices. If the amount of tax is posted or otherwise disclosed, the tax is assumed to be included in the receipts. If the amount of tax is not posted or otherwise disclosed, the tax is calculated on the full amount of the receipts. The tax is due at the tax rate of the place of amusement, not the device owner's place of business. If both the owner of the device and the operator of the place of amusement where the device is located sign a written receipt setting forth each party's share of the receipts, each party is responsible for its portion of the tax. If the owner of an amusement device takes control over the receipts and there is no signed receipt, the owner is responsible for one hundred percent (100%) of the tax and the operator is not liable for any tax. If the operator takes control over the receipts and there is no signed receipt, the operator is responsible for one hundred percent (100%) of the tax.

(G) Purchases of machines or parts for machines used in a commercial coin-operated amusement business are subject to tax unless tax is paid on the gross receipts derived from the use of the machines.

(H) The place of amusement must pay tax on purchases of printed tickets and game tokens. The purchase of tangible personal property, other than the amusement device, used to provide the amusement, recreation and entertainment services is also subject to tax.

(I) The purchase of prizes and awards to be given to participants

who pay to participate in a game or contest is subject to tax unless tax is paid on the receipts from the game or contest. The purchase of promotional items is subject to tax, unless the items are provided only to people who pay for the taxable amusement.

(J) Gifts of tickets by a place of amusement are not subject to tax.

(K) Purchases of game to stock a sports hunting range are not subject to tax.

(4) Examples:

(A) Places of amusement include, but are not limited to:

1. Billiard center
2. Fitness center
3. Excursion vessel
4. Helicopter hired for sightseeing
5. Country club
6. Arcade
7. Wild game ranch
8. Bowling alley
9. Adult video arcade
10. Hot air balloon ride
11. Nightclub
12. Resort
13. Racetrack
14. Shooting range
15. Indoor and outdoor sports facilities
16. Scenic railway
17. Summer camp
18. Amusement park
19. Private lake
20. Tavern

(B) The following are examples of places that are not usually considered to be places of amusement:

1. River
2. Hotel or motel lobby
3. Bus station
4. Airport

(C) A golf course charges \$40 to play golf, which price does not include the use of a golf cart. The course charges an additional \$20 if the players choose to rent one of its golf carts. The \$40 for golf is subject to tax. The \$20 for the rental of the cart is subject to tax unless the course paid tax on the cart at the time of purchase.

(D) A golf course charges \$50 to play golf and an additional mandatory \$20 charge designated as the rental of a golf cart. The entire \$70 is subject to tax even though the amount for the cart rental is separately stated. The course also must pay tax on the purchase of the golf cart.

(E) A country club charges \$40 per session of golf lessons. The \$40 is not subject to tax.

(F) A guest at a resort pays \$40 for a haircut. This amount is not taxable, even though paid in a place of amusement, because a haircut is not an amusement, and does not facilitate participation in or admission to an amusement.

(G) A private golf club operates a dining facility that serves food and beverages only to the club's members and their guests. The sales of food and beverages by the club are not subject to tax but the club must pay tax on its purchases of these items.

(H) A shooting range charges a fee for its customers to use its facilities to shoot at various types of targets. The fee is subject to tax as a fee paid to a place of amusement. The business must also pay tax on any items used or consumed to provide the amusement unless title or ownership to such items is actually transferred to the customer.

(I) A nightclub or tavern charges patrons a mandatory \$5 cover charge on Friday nights. This cover charge is subject to tax because the nightclub or tavern is a place of amusement.

(J) A business offers patrons helicopter sightseeing rides for a fee. The fee is subject to tax.

(K) A business operates a hunting preserve. It charges a fee for

patrons to hunt on the preserve. The fee is subject to tax and the business must also pay tax on any items used or consumed to provide the entertainment.

(L) A business charges a \$10 fee for participants to use its go-karts. The go-karts may only be used on the business's racetrack. The entire \$10 fee is subject to tax. In addition, the business must pay tax on the purchase of the go-karts.

(M) A country club has two classes of members, senior and junior. In order to obtain membership, senior members are required to pay a one-time fee of \$50,000, which entitles them to vote on club matters and to receive a share of any distribution on liquidation of the club. The \$50,000 payment is not taxable. Junior members must pay a one-time initiation fee of \$5,000. Junior members have the right to use club facilities, but do not have the right to vote or share in a distribution. The \$5,000 initiation fee is taxable because the junior member does not obtain an equity ownership (the right to vote and share in distributions) in the club. In addition, all members must pay \$200 per month to use the facilities. The \$200 is subject to tax as a fee paid to a place of amusement.

(N) A hotel offers two shuffleboard courts to guests for a fee. The courts are not in a separate facility. The profits from the shuffleboard are *de minimis* in relation to the total profits of the business. The fees paid for the shuffleboard are not taxable.

(O) A restaurant has a single pool table that is not a coin-operated amusement device located in its facility. The profit from the pool table is *de minimis* in relation to the total profits of the business. Tax was paid on the purchase of the pool table. The receipts from this pool table are not taxable.

(P) A ticket broker sells tickets for admission to a theatre that the broker does not operate. The broker charges a service charge on the sale of the ticket. The broker does not collect tax on its sales of the tickets or the service charge. The theatre must pay tax on the gross receipts it receives from the broker.

(Q) For a fee, a water park provides inner tubes for use in the wave pool. The inner tubes are not required to swim in the wave pool. These tubes may also be used in other activities at the park. The water park also provides without charge inner tubes for use in these other activities, but these tubes may not be used in the wave pool. The water park must collect and remit tax on the amounts received from the wave pool inner tubes if tax is not paid on the purchase of the inner tubes.

(R) An arcade has skee ball, air hockey, video games and pinball machines. The taxpayer may elect to pay tax either on the purchase of the machines or the gross receipts from the machines.

AUTHORITY: sections 144.270, RSMo 2000, and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Revenue forty-four thousand three hundred thirty-eight dollars and fifty cents (\$44,338.50) with that cost recurring annually over the life of the rule.

PRIVATE COST: This proposed rule is estimated to cost private entities five hundred ninety-five thousand dollars (\$595,000) with that cost recurring annually over the life of the rule.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, 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.

PUBLIC COST

- I. Department Title: Department of Revenue**
Division Title: Director of Revenue
Chapter Title: Chapter 108 – Sales/Use Tax-Taxable Services

Rule Number and Name:	12 CSR 10-108.100 Amusement, Entertainment and Recreation
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance in the Aggregate
Missouri Department of Revenue	\$44,338.50

III. WORKSHEET

It costs the Department of Revenue \$2.25 to process a typical sales tax return. Based on an estimated 16,700 returns filed by amusement related businesses in a given year, the costs to process are $16,700 \times \$2.25 = \$37,575$. The Department of Revenue's costs to print and mail returns to amusement related businesses are \$.405 per return. The calculation for these costs are $16,700 \times \$.405 = \$6,763.50$.

IV. ASSUMPTIONS

The costs assume no postal discounts for mailing are realized.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Department of Revenue
Division Title: Director of Revenue
Chapter Title: Chapter 108 – Sales/Use Tax-Taxable Services

Rule Number and Title:	12 CSR 10-108.100 Amusement, Entertainment and Recreation
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate annually in the aggregate as to the cost of compliance with the rule by the affected entities:
2,400	Amusement Related Businesses - \$30 in cost to prepare and file a sales tax return.	\$501,000
47	Coin Operated Amusement Services - \$2000 additional accounting	\$94,000

III. WORKSHEET

The Department of Revenue receives approximately 16,700 returns per year from approximately 2,400 amusement related businesses. The estimated cost to prepare and file a return per business is \$30 per filed return. The cost to all amusement related businesses to comply is 16,700 X \$30.

One business commenter, the owner of a company that rents coin operated amusement devices, stated that it may cost as much as \$2000 annually to account for which of the company's devices are subject to tax and which are not under current Supreme Court precedent. There are 47 businesses currently registered with the department using the Standard Industry Code applicable to such businesses. Total cost to these businesses would be \$94,000.

IV. ASSUMPTIONS

The rule does not change existing practice. The department cannot determine the actual costs of preparing and filing a return. The department assumes for purposes of this fiscal note that it costs \$30 annually. This cost would be incurred as a result of section 144.020.1(2), RSMo., regardless of the contents of this rule. The department assumes every business makes at least one sale per reporting period.

The department includes the estimate from the commenter without independently verifying the asserted costs. Assuming these costs are accurate, they would be incurred to distinguish between (1) machines on which the business collects and remits tax on the receipts from the machines, from (2) machines on which the business does not collect and remit tax on the receipts. The machines on which it collects and remits tax may be purchased exempt from tax pursuant to section 144.518, RSMo, while the others are subject to tax when purchased. To avoid this expense, the business could collect and remit tax on receipts from all its machines (assuming it would have no way of distinguishing without the additional expense) and buy all its machines exempt from tax.

The figure above is based on the assumption every business makes at least one sale per reporting period.

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

PROPOSED AMENDMENT

12 CSR 10-110.200 Ingredient or Component Part Exemption, as Defined in Section 144.030, RSMo. The director proposes to amend the title, and sections (1) and (4).

PURPOSE: This rule is being amended due to TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

(1) In general, purchases of ingredients or component parts are exempt from tax if they blend with the final product and are intended to and do become a part of the finished product. In addition, *[certain]* materials that are consumed in the manufacturing, **processing, compounding, mining, producing or fabricating of [steel]** products intended to be sold ultimately for final use or consumption are exempt from tax.

(4) Examples.

(A) A toy manufacturer purchases wood, glue, **and** paint *[and sandpaper]* to use in the manufacturing of wooden rocking horses. The purchases of wood, glue and paint are exempt from tax. *[The purchase of sandpaper is taxable.]*

(B) A restaurant purchases apple wood to use in the smoking of foods. The restaurant burns the wood in a closed chamber, called a smoker, in which it places the food. The burning wood releases compounds, and small but measurable quantities of the compounds enter and permeate the food. Because a part of the wood, in the form of smoke particles, blends with and remains as part of the finished product, the apple wood may be purchased tax exempt as an ingredient or component part.

(C) An automobile manufacturer purchases *[soap and]* wax to *[wash and]* wax all automobiles as they leave the manufacturing plant. *[Some soap residue remains with the automobiles when they leave the plant. The soap does not qualify as an ingredient or component part because it is not intended to remain with the product.]* The wax *[does qualify]* **qualifies** as a component part because it is intended to remain with the product.

(E) A steel fabricator purchases welding rods *[and gases]* for use in fabricating a product out of steel plates. The welding rods are exempt because *[it]* **they** become/s) a component part of new personal property. *[Even though the gases are consumed in the fabrication process, the gases are not exempt because the new personal property does not qualify as a steel product.]*

[(F) A foundry creates a steel product by casting molten steel. After casting, a cleaning solution is poured over the product to remove impurities from the surface. The cleaning solution is not exempt because it does not blend, react or interact with a component part or ingredient of the steel product.]

AUTHORITY: section 144.270, RSMo [1994] 2000. Original rule filed Aug. 30, 2000, effective March 30, 2001. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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, Legal Services Division, Governmental Affairs Bureau, 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.

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

PROPOSED RULE

12 CSR 10-110.201 Materials and Other Goods Used or Consumed in Manufacturing, as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts from taxation certain materials, goods, machinery and parts. This rule explains the requirements for this exemption.

(1) In general, purchases of gas (natural, artificial, or propane) water, coal, and energy sources, chemicals, machinery, equipment and materials that are used or consumed in the manufacturing, processing, compounding, mining or producing a product are exempt from state sales and use tax and local use tax, but not from local sales tax. Local sales tax applies to these transactions.

(2) Basic Application of Exemption.

(A) Gas (natural, artificial, or propane) water, coal, and energy sources, chemicals, machinery, equipment and materials that are used or consumed in manufacturing, processing, compounding, mining or producing a product are exempt from state sales and use tax and local use tax, but not local sales tax. It is not necessary for the item purchased to be used directly in manufacturing in order to qualify for the exemption.

(3) Examples.

(A) A toy manufacturer purchases sandpaper to use in the manufacturing of wooden rocking horses. The purchase of sandpaper is exempt from state sales and use tax and local use tax, but not local sales tax because it is a material that is consumed in producing a product.

(B) An automobile manufacturer purchases soap to wash all automobiles as they leave the manufacturing plant. The soap qualifies as a material used or consumed in the manufacturing process and is exempt from state sales and use tax and local use tax, but not local sales tax.

(C) A steel fabricator purchases gases for use in fabricating a product out of steel plates. The gases that are consumed in the fabrication process are exempt from state sales and use tax and local use tax, but not local sales tax, because they are consumed in producing a product.

(D) A foundry creates a steel product by casting molten steel. After casting, a cleaning solution is poured over the product to remove impurities from the surface. The solution is used or consumed in the producing of a product and is exempt from state sales and use tax and local use tax, but not local sales tax.

AUTHORITY: section 144.270, RSMo 2000. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, 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.

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

PROPOSED RULE

12 CSR 10-110.210 Television and Radio Broadcasters

PURPOSE: This rule explains the television and radio broadcasters sales tax exemption.

(1) In general, radio and television broadcasters are exempt from sales and use tax, both state and local, on purchases of utilities, machinery, and equipment used or consumed directly in the broadcasting of their programs.

(2) Definition of Terms.

(A) Broadcaster—An entity who transmits (a radio or television signal) over the airwaves for public or general use. A cable or satellite provider is not a broadcaster.

(3) Basic Application.

(A) A Missouri radio or television station purchases utilities, machinery and equipment for use directly in the broadcasting of their programming. The purchase of the utilities, machinery and equipment are not subject to state or local tax.

AUTHORITY: section 144.270, RSMo 2000 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, 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.

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

PROPOSED AMENDMENT

12 CSR 10-110.300 Common Carriers. The director proposes to amend sections (1) and (4) and reletter existing subsections accordingly.

PURPOSE: This rule is being amended as a result of statutory changes to section 144.030.2(11).

(1) In general, materials, replacement parts, and equipment purchased for use directly upon, and for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property are not subject to tax. Pumping machinery and equipment used to propel products delivered by pipelines engaged as common carriers are not subject to tax. Railroad rolling stock used in transporting persons or property in interstate commerce is not subject to tax. Motor vehicles licensed for a gross weight of twenty-four thousand (24,000) pounds or trailers used by common carriers *[solely]* in the transportation of persons or property *[in interstate commerce]* are not subject to tax.

(4) Examples.

(C) A common carrier purchases a cab and chassis. The cab and chassis **are licensed for a gross weight of 24,000 pounds and will be used only in intrastate commerce as a common carrier.** The purchase of the cab and chassis is **not** taxable. The common carrier subsequently purchases a dump bed to add to the cab and chassis. The dump bed is exempt from tax because it is materials or equipment used in the manufacture of a motor vehicle to be used by a common carrier.

[(E) A common carrier purchases a cab and chassis. The cab and chassis will be used only in intrastate commerce as a common carrier. The purchase of the cab and chassis is taxable because the cab and chassis are not used in interstate commerce. The common carrier subsequently purchases a dump bed to add to the cab and chassis. The dump bed is exempt from tax because it is materials or equipment used in the manufacture of a motor vehicle to be used by a common carrier.]

[(F)] (E) A common carrier purchases a trailer. The common carrier subsequently purchases a refrigeration unit to add to the trailer. The refrigeration unit is exempt from tax because it is materials or equipment used in the manufacture of a motor vehicle to be used by a common carrier.

[(G)] (F) The sale of a switch engine to be used to move railroad cars around a switching yard, if part of an interstate rail system, is not subject to tax.

[(H)] (G) An airline purchases equipment to test engine parts that have been removed from the plane and brought to their repair facility. The equipment purchased would be exempt from tax.

[(I)] (H) The owner of a Missouri furniture store is registered as a common carrier, but does not hold itself out to the general public as a common carrier. It uses its truck only to deliver furniture sold to customers residing in and outside Missouri. The owner installs new brakes on the truck. Even though the owner is registered as a common carrier, the brakes are taxable because the furniture store is operating as a private carrier.

[(J)] (I) A charter company [only provides bus transportation by] contracts with private groups for [private groups] exclusive use of its bus and driver for [tours of] transportation between Missouri and destinations in the Southeastern United States. The company provides no other transportation services. The charter company purchases new tires. The tires are taxable because the business is a contract carrier.

[(K)] (J) A railroad purchases a flanged wheel mechanized tie replacement machine for repairing broken rail segments on an interstate system. The purchase of the machine is exempt.

AUTHORITY: *section 144.270, RSMo 2000, and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Original rule filed Jan. 24, 2001, effective Aug. 30, 2001. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.*

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, Legal Services Division, Governmental Affairs Bureau, 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.*

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

PROPOSED AMENDMENT

12 CSR 10-110.600 Electrical Energy as Defined in Section 144.030, RSMo. The director proposes to amend the title, the purpose, and sections (1) through (4).

PURPOSE: *This rule is being amended due to TAFP HCS SCS SB 196, enacted by the 93rd General Assembly, 2005, and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.*

PURPOSE: *Section 144.030.2(12), RSMo exempts from tax certain purchases of electrical energy used in primary or secondary manufacturing, processing, compounding, mining or producing a product, [or used in material recovery processing] or processing of raw materials that contain recovered materials. Section 144.030.2(31), RSMo exempts from tax electricity used in connection with the manufacturing of cellular glass products or in any material recovery processing plant. Section 144.030.2(33), RSMo exempts from tax utilities used or consumed directly or exclusively in the research and development of agricultural biotechnology products and plant genomics products and prescription pharmaceuticals consumed by humans or animals. This rule explains when [this] these exemptions [applies] apply and how a taxpayer may claim the exemptions at the time of purchase of the electrical energy.*

(1) In general, electrical energy used in facilities owned or leased by the taxpayer in the actual primary manufacturing, processing, compounding, mining or producing of a product is exempt from tax if the cost of the electrical energy used exceeds ten percent (10%) of the total cost of the primary manufacturing, processing, compounding, mining or producing, exclusive of the cost of electrical energy so used. Electrical energy used in facilities owned or leased by the taxpayer in the actual secondary manufacturing, processing, compounding, mining or producing of a product is exempt from tax if the cost of the electrical energy used exceeds ten percent (10%) of the total cost of the secondary manufacturing, processing, compounding, mining or producing, exclusive of the cost of electrical energy so used. Electrical energy used in a material recovery processing plant owned or leased by the taxpayer **or in manufacturing cellular glass products** is exempt from tax **[if the total cost of electric energy used in such processing exceeds ten percent (10%) of the total cost of the processing, exclusive of the cost of electri-**

cal energy so used]. Utilities used or consumed directly or exclusively in the research and development of agricultural biotechnology products and plant genomics products and prescription pharmaceuticals consumed by humans or animals are exempt from tax. Electrical energy used in facilities owned or leased by the taxpayer in *[manufacturing,]* processing *[, compounding, mining or producing a product or in a material recovery processing plant is exempt if the raw materials used in such processing]* raw materials that contain at least twenty-five percent (25%) recovered materials **is exempt from tax.**

(2) Definition of Terms.

(B) Fabrication—See 12 CSR 10-111.010[(2)(C)].

(C) Manufacturing—See 12 CSR 10-111.010[(2)(E)].

(D) Material recovery processing plant—*[A facility that converts recovered materials into a new product or into a different form that is used in producing a new product. It includes facilities or equipment used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but does not include motor vehicles used on highways.] See 12 CSR 10-111.060.*

(E) Mining—See 12 CSR 10-111.010[(2)(F)].

(F) Primary processing—Manufacturing, processing, compounding, mining or producing that results in the first marketable product.

[(G) Processing—Any mode of treatment, act or series of acts performed upon materials to transform and reduce them into an article with a use, identity and market value different from the use, identity and market value of the materials, and includes treatment necessary to maintain or preserve such processing by the producer at the production facility.]

[(H)] (G) Producing—See 12 CSR 10-111.010[(2)(H)].

[(I)] (H) Product—An item with a new identity, use and market value produced by the taxpayer's efforts which is intended at the time of the production activity to be sold ultimately for final use or consumption. A product may be tangible personal property or a service, if the property or service is subject to state or local sales or use taxes, or any tax that is substantially equivalent thereto, in this state or any other state.

[(J)] (I) Production activity—Manufacturing, processing, compounding, mining, producing or fabricating.

(J) Raw material—any ingredient or component that becomes part of, or is made into a finished product.

(K) Recovered materials—*[Materials that have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not they require subsequent separation or processing.] See 12 CSR 10-111.060. In order for an item to be a recovered material, a facility must recover it from the solid waste stream. An item used in processing for its original intended purpose is not a recovered material.*

(L) Secondary processing—Further processing or fabricating of a marketable product that results in another marketable product.

(M) Solid waste—See 12 CSR 10-111.060.

[(M)] (N) Total cost—All allocated costs incurred in producing the product, including all elements of production cost in accordance with generally accepted accounting principles.

(3) Basic Application of Exemption.

(A) A taxpayer may claim this exemption at the time of purchase of the electrical energy by presenting the seller with a direct pay certificate issued by the department. In order to obtain a direct pay certificate, the taxpayer must submit *[annually]* an electrical energy direct pay authorization application. The application must demonstrate, by the use of the previous calendar year's data, a probable entitlement to the electrical energy exemption for the coming year. The taxpayer must file and remit the appropriate tax on energy purchases that do not qualify for this exemption on its sales tax return.

(4) Examples.

(A) A manufacturing firm produces extruded sheet plastic. The

automated production line is a closed system connected together by use of vacuum feed-pipe. When an order is received, the computer controlled production line first blends the necessary raw materials. After blending, the mix is conveyed through vacuum pipe to be dried, and then to the extruder, where the mix is heated to meltdown and rolled into sheets by the extruder rollers. These sheets are the end product. The cost of raw materials is 95% of the total cost of producing the end product. The cost of electrical energy is 99% of the cost of drying and extruding the blended raw materials. The plastic sheet is the only marketable product produced by this continuous, indivisible operation. *[None of the electrical energy is exempt because it does not exceed 10% of the total cost of producing the end product.]* **Because the cost of electricity does not exceed 10% of the total cost of producing the product, the purchase of the electricity does not qualify for the exemption.**

(B) A manufacturer produces glass bottles to be used as packaging. The manufacturer combines raw materials, including recycled glass **obtained from recyclers**, which is then melted under extreme heat. The molten glass is then formed into bottles, which are the manufacturer's only product. The electrical energy costs exceed 10% of the total cost of production; therefore the manufacturer qualifies for the exemption. If the manufacturer's raw materials include at least 25% *[recycled]* **recovered** material, the manufacturer may avoid the time and cost involved in the calculations necessary to support the exemption under the 10% threshold and claim the exemption based on its use of *[recycled]* **recovered** materials.

(E) A paper manufacturer uses recycled paper *[to produce]* **in its primary processing of producing** rolls of newsprint. The newsprint includes *[more than 25%]* **50%** recovered paper, *[and qualifies]* **qualifying the manufacturer** for the electrical energy exemption **from state and local taxes**. The newsprint is subsequently cut into sheets **during secondary processing** for sale to a book printer. The cost of electricity *[to cut the sheets]* **used during the secondary processing** does not exceed 10% of the total cost of producing the cut sheets. **However, [T]he electrical energy used to produce the final product is also exempt because the [manufacturer] secondary process uses at least 25% recovered materials.**

AUTHORITY: section 144.270, RSMo 2000. Original rule filed July 25, 2001, effective Feb. 28, 2002. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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, Legal Services Division, Governmental Affairs Bureau, 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.

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

PROPOSED RULE

12 CSR 10-110.601 Electrical, Other Energy and Water as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo, exempts from state tax and local use tax, but not local sales tax, electricity, gas (natural, arti-

cial, or propane) water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing, processing, compounding, mining or producing any product or in the processing of recovered materials. This rule explains when this exemption applies and how a taxpayer may claim the exemption at the time of purchase of the utilities, energy and water.

(1) In general, electricity, gas (natural, artificial, or propane) water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing, processing, compounding, mining or producing any product is exempt from state sales and use tax and local use tax, but not local sales tax.

(2) Definition of Terms.

(A) Compounding—Producing a product by combining two (2) or more ingredients or parts.

(B) Energy source—Those resources, such as petroleum, coal, gas, wind, steam, nuclear fuel and sunlight, from which energy is produced.

(C) Fabrication—See 12 CSR 10-111.010.

(D) Manufacturing—See 12 CSR 10-111.010.

(E) Material recovery processing plant—See 12 CSR 10-111.060.

(F) Mining—See 12 CSR 10-111.010.

(G) Producing—See 12 CSR 10-111.010.

(H) Recovered materials—See 12 CSR 10-111.060.

(3) Basic Application of Exemption.

(A) A taxpayer may claim the exemption for state sales and use tax and local use tax, but not local sales tax at the time of purchase. A taxpayer may not claim an exemption from local tax and then remit the tax directly to the department. It is the seller's responsibility to collect and remit the proper amount of local tax to the department.

(B) For purchases which are reported to the department under direct pay and Electrical Energy Direct Pay (EEDP) are exempt from the application of subsection (3)(A) of this rule.

(C) The electricity, other energy, and water source that is subject to this exemption is not required to be directly used in the process for which the exemption is being claimed. There is also no requirement that the electricity comprise ten percent (10%) of the cost of a primary or secondary production process in order to qualify for this exemption. There is also no requirement that twenty-five percent (25%) of the raw materials are recycled in order for the purchaser to claim this exemption.

(4) Method of Collection and Apportionment.

(A) Energy and water vendors are responsible for remitting tax to the department. Purchasers are responsible to inform energy vendors on the MO-149 (Sales/Use Tax Exemption Certificate) of the percentage of energy used for activities exempt under section 144.054, RSMo. The purchaser may use any reasonable method to calculate this percentage, such as square footage or reference to a use analysis. The exemption will be applied as follows:

Purchaser's Calculated Exempt Percentage	Percentage Exempt
76-100	100
51-75	75
26-50	50
1-25	25
0	0

(B) Beginning on August 28, 2007 and ending on October 28, 2007 any vendor who receives an exemption certificate exempting sales of electricity, gas (natural, artificial, or propane) water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing, processing,

compounding, mining or producing any product after the bill was issued may take the correction as an adjustment on their sales tax return provided the net result is not a negative figure. In the event an exemption certificate is received after October 28, 2007 and an exemption was due and not properly applied by the vendor, the vendor may submit a refund request to the department.

(5) Exempt Examples.

(A) A manufacturer purchases propane to operate forklifts that move raw materials between production lines. The fuel is exempt from state sales and use tax and local use tax, but not local sales tax.

(B) A manufacturer uses electricity to run its equipment, maintain a moderate temperature in its production facility and to light the plant. The purchase of all of its electricity is exempt from state sales and use tax and local use tax, but not local sales tax because it is used or consumed in producing a product.

(C) A manufacturer uses coal to fuel boilers to generate steam used to manufacture a product. The purchase of the coal is exempt from state sales and use tax and local use tax, but not local sales tax because it is used or consumed in producing a product.

(D) A manufacturer purchases compressed gas used for welding a product. The purchase of the compressed gas is exempt from state sales and use tax and local use tax, but not local sales tax because it is used or consumed in producing a product.

(E) A manufacturer uses water to cool a product during the manufacturing process. The water is exempt from state sales and use tax and local use tax, but not local sales tax.

(F) A manufacturer preserves its final product in a warehouse located at the production facility awaiting shipment. The purchase of energy to maintain the desired temperature and provide lighting is exempt from state sales and use tax and local use tax, but not local sales tax.

(G) A construction company, who has been deemed a manufacturer, purchases fuel to be used in a concrete ready-mix truck. The fuel is subject to motor fuel tax, however if a refund claim is made, the refund will be exempt from state sales tax, but not local sales tax, because it is used in producing a product.

(6) Taxable Examples.

(A) A restaurant preparing food for immediate consumption is not exempt as a manufacturer. Therefore, all state and local taxes apply.

AUTHORITY: section 144.270, RSMo 2000 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, 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.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery and
Equipment Exemptions**

PROPOSED AMENDMENT

12 CSR 10-111.010 Manufacturing Machinery and Equipment Exemptions, as Defined in Section 144.030, RSMo. The director proposes to amend the title and add subsection (2)(J).

PURPOSE: This rule is being amended due to TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

(2) Definition of Terms.

(J) Used directly in manufacturing, mining, fabricating or producing a product—substantially used in, essential to, and comprising an integral part of the manufacturing, mining, fabricating or producing process. Under the integrated plant theory, adopted by Missouri, it is not sufficient to meet only one of these requirements. For example, items used in material storage or handling before the manufacturing process begins may be essential to the process, but generally are not an integral part of the manufacturing process and are therefore not used directly in manufacturing. Similarly, items used for storing the finished product are generally not an integral part of the manufacturing process. The factors that determine whether an article is directly used are: whether the item is essential or necessary to the process; how close, causally, is the item to the production process; and whether the item operates harmoniously with other machinery to make an integrated and synchronized system. The direct use requirement is not limited to those items of machinery, equipment and parts that produce a direct physical change in the composition of the raw materials or work in process. As long as there is a continuous progression from raw materials to finished product and there are no extended interruptions in the manufacturing process, the integrated and synchronized system begins when raw materials enter the production process and ends when the product is finished.

AUTHORITY: section 144.270, RSMo [1994] 2000. Original rule filed Aug. 31, 1999, effective March 30, 2000. Amended: Filed Aug. 14, 2007.

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, Legal Services Division, Governmental Affairs Bureau, 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.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery and
Equipment Exemptions**

PROPOSED RULE

12 CSR 10-111.011 Machinery, Equipment, Materials, and Chemicals Used or Consumed in Manufacturing, as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts machinery, equipment, materials, and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product, or used in research and development related to manufacturing, processing, compounding, mining or producing any product from state sales and

use tax and local use tax, but not local sales tax. This rule explains what elements must be met in order to qualify for these exemptions.

(1) In general, the purchase of machinery, equipment and materials used or consumed in manufacturing, processing, compounding, mining or producing any product or is used in research and development related to manufacturing, processing, compounding, mining or producing any product is exempt from state sales and use tax and local use tax, but not local sales tax.

(2) Definition of Terms.

- (A) Equipment—See 12 CSR 10-111.010.
- (B) Fabrication—See 12 CSR 10-111.010.
- (C) Machinery—See 12 CSR 10-111.010.
- (D) Manufacturing—See 12 CSR 10-111.010.
- (E) Mining—See 12 CSR 10-111.010.
- (F) Producing—See 12 CSR 10-111.010.

(3) Basic Application of Exemption.

(A) Pursuant to section 144.054.2, RSMo purchases of machinery, equipment, materials and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing, processing, compounding, mining or producing any product is exempt from state sales and use tax and local use tax, but not local sales tax.

(B) The exemptions do not require that the owner of the facility be the purchaser to qualify for the exemption or that the purchaser be the one who uses the machinery, equipment and materials in an exempt fashion. All that is required is that the machinery, equipment and materials are used in a tax-exempt manner.

(4) Exempt Examples.

(A) A manufacturing company purchases various pieces of testing equipment to perform research and development on potential future products. The testing equipment for research and development is exempt from state sales and use tax and local use tax, but not local sales tax, because it is used or consumed in research and development related to manufacturing a product.

(B) A commercial photo developer uses “crop cards” to hold individual negatives in the film developing process; they are discarded after a single use. The developer also uses tape to connect negative strips so that the negatives may be fed through its automatic film developing machinery and equipment. The crop cards and tape are exempt from state sales and use tax and local use tax, but not local sales tax, as materials used and consumed in producing a product.

(C) A manufacturer purchases materials to develop models for research and development for use in designing a new product. The manufacturer may purchase the materials exempt from state sales and use tax and local use tax, but not local sales tax, because they are used in research and development related to manufacturing.

(D) Workers in a manufacturing plant are required to wear safety equipment while producing a product. The safety equipment is exempt from state sales and use tax and local use tax, but not local sales tax, because it is used to produce a product.

(5) Nonexempt Examples.

(A) A taxpayer operates a concrete manufacturing plant. The taxpayer purchases dump trucks to haul, to customers, concrete slabs that had been manufactured in its plant. The dump trucks would not qualify for exemption because they are not used in the manufacturing process, but rather in the shipping process.

(B) A taxpayer creates and sells a nontaxable information service. To develop its service, the taxpayer purchases computer hardware and software. The computer hardware and software do not qualify for the state tax exemption pursuant to section 144.054.2, RSMo, because they are machinery and equipment used in producing a service and not a product.

AUTHORITY: section 144.270, RSMo 2000 and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed

Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, 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.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery And
Equipment Exemptions**

PROPOSED RULE

12 CSR 10-111.061 Exempt Items Used or Consumed in Material Recovery Processing as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts machinery, equipment, materials, coal, energy sources and chemicals used or consumed in the processing of recovered materials from state sales and use tax and local use tax, but not local sales tax. This rule explains the elements that must be met in order to qualify for the exemption.

(1) In general, the purchase of machinery, equipment, materials and chemicals used or consumed in the processing of recovered materials are exempt from state sales and use tax and local use tax, but not local sales tax.

(2) Basic Application of Exemption.

(A) Purchases of machinery, equipment and materials used or consumed in the processing of recovered materials are exempt from state sales and use tax and local use tax, but not local sales tax. Coal, energy sources and chemicals used or consumed in the processing of recovered materials are also exempt from state sales and use tax and local use tax, but not local sales tax.

(B) Electrical energy or gas (natural, artificial or propane) water, or other energy sources consumed in processing recovered materials is exempt from state and local tax (144.030.2(31), RSMo).

(3) Examples.

(A) A metal recycler uses diesel fuel to operate its hydraulic cutter. The diesel fuel may be purchased exempt from state sales and use tax and local use tax, but not local sales tax, because it is used or consumed in the processing of recovered materials.

(B) A paper recycler mixes water with paper in its pulping equipment in order to separate the paper fibers from each other. The water may be purchased exempt from state sales and use tax and local use tax, but not local sales tax.

(C) An aluminum can recycler uses natural gas in its furnace to melt aluminum scraps into molten aluminum. The purchase of the natural gas is exempt from state sales and use tax and local use tax, but not local sales tax because it is consumed in the processing of recovered materials.

AUTHORITY: section 144.270, RSMo 2000 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, 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.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery and
Equipment Exemptions

PROPOSED AMENDMENT

12 CSR 10-111.100 Commercial Printers, as Defined in Section 144.030, RSMo. The director proposes to amend the title and sections (1), (3), and (4).

PURPOSE: This rule is being amended due to TAFP HCS SCS SB 196, enacted by the 93rd General Assembly, 2005 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

(1) In general, sales of printed product by commercial printers are subject to tax. Purchases of materials and supplies, such as paper and ink, which become a component part or ingredient of the printed product are exempt. Other materials used by the printer may be exempt if title or ownership to the materials transfers to the customer. Purchases of machinery, equipment and parts for replacement or for a new or expanded plant are exempt if directly used in the manufacturing process. This includes printing presses and plates. *[Chemicals to develop the film and plates are not exempt unless they become an ingredient or component part of materials resold to the customer.]*

(3) Basic Application of Tax.

(B) Ingredients and component parts—Purchases of material and supplies such as paper and ink may be purchased tax exempt by printers as ingredients or component parts under section 144.030.2(2), RSMo.

1. Chemicals that blend with and become part of the ink mixture are exempt, including:

A. The fountain solution that blends with the ink at the press to keep the non-image area clean of ink while printing;

B. Chemicals used on the rollers to keep the ink from drying out;

C. Isopropyl alcohol to keep the ink wet on the rollers; and

D. Ink anti-stain used to keep the ink from bleeding onto other printed material.

[2. Purchases of material and supplies used in the printing process that do not blend with the ink are taxable, including:

A. Anti-static products used to reduce static on the printed product;

B. Chemicals used to clean the presses; and

C. Color wax used for layout purposes.]

(C) *[Other materials transferred to customers—]*Purchases of materials, including film, used by the printer in its manufacturing process do not qualify for the sale for resale exclusion unless title or ownership to such materials is transferred to the customer. Whether title passes is based on the intent of the parties, as evidenced by all relevant facts, including written agreements, course of dealing or

usage of trade and availability of the materials for future use by the customer.

(D) Chemicals—Chemicals to develop the film and plates are *[not]* exempt *[unless]* if they become an ingredient or component part of materials resold to the customer. *[Chemicals that generally do not become an ingredient or component part include chemicals used on plates to desensitize the plates and to prevent them from oxidizing, developers, replenishers, finishers, fixers, store gum and plating solution.]*

(E) Supplies and Parts.

1. Perforation devices consumed in a single production cycle are not exempt as machinery and equipment or parts.

2. Perforation devices benefiting more than one production cycle are exempt as parts of machinery and equipment.

3. Blankets and necessary attachments are exempt as parts of machinery and equipment.

4. Proof paper and phototypesetting paper are not exempt as machinery and equipment or parts.

5. Mineral spirits used as a solvent to clean brushes, overspray and equipment are *[taxable]* **not exempt as ingredients or component parts** if used as a cleaning solvent separate from the ink. If mixed with the ink, then the mineral spirits are exempt as ingredients or component parts.

(4) Examples.

(B) A commercial printer purchases plates~~/,~~ and film~~/~~, phototypesetting paper, developer chemical for plates and film (which do not become a part of the plates or film), and press cleaning solvent that is not mixed with ink]. The plate is exempt machinery and equipment. The printer's contract with the customer states the negatives become the property of the customer. The film is exempt as a component part of the negative. *[The phototypesetting paper does not qualify for exemption as machinery or equipment, ingredient or component part or sale for resale. The developer chemicals and cleaning solvent do not qualify for exemption as ingredients or component parts or sales for resale.]*

AUTHORITY: section 144.270, RSMo 2000. Original rule filed Oct. 11, 2001, effective April 30, 2002. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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, Legal Services Division, Governmental Affairs Bureau, 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.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery and
Equipment Exemptions

PROPOSED RULE

12 CSR 10-111.101 Items Used or Consumed by Commercial Printers, as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts from state tax, but not local tax, machinery, equipment, materials and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing. This rule explains the taxation rules for commercial printers and what elements must be met to qualify for these exemptions.

(1) In general, purchases of machinery, equipment, materials and chemicals used or consumed by a printer in the production process are exempt from state tax and local use tax, but not local sales tax.

(2) Definition of Terms. See definition of terms in 12 CSR 10-111.010 Machinery and Equipment Exemptions.

(3) Basic Application of Tax.

(A) Purchases of material and supplies used in the printing process that do not blend with the ink are exempt from state tax and local use tax, but not local sales tax, including, anti-static products used to reduce static on the printed product; chemicals used to clean the presses and color wax used for layout purposes.

(B) Chemicals to develop the film and plates are exempt from state tax and local use tax, but not local sales tax. Chemicals exempt from state, but not local tax include chemicals used on plates to desensitize the plates and to prevent them from oxidizing, developers, replenishers, finishers, fixers, store gum and plating solution.

(C) Perforation devices consumed in a single production cycle are exempt from state tax, but not local tax as machinery and equipment used or consumed in the printing process. Proof paper and phototypesetting paper are also exempt from state tax, but not local tax as machinery and equipment used or consumed in the printing process. Mineral spirits used as a solvent to clean brushes, overspray and equipment are exempt from state tax and local use tax, but not local sales tax even when used as a cleaning solvent separate from the ink.

(4) Example.

(A) A commercial printer purchases phototypesetting paper, developer chemical for plates, film (which does not become the property of the customer) and press cleaning solvent that is not mixed with ink. All these items are exempt from state tax and local use tax, but not local sales tax as materials used or consumed in producing a product.

AUTHORITY: section 144.270, RSMo 2000 and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, 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.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 112—Sales/Use Tax—Contractors**

PROPOSED AMENDMENT

12 CSR 10-112.010 Contractors. The director proposes to amend subsection (3)(D).

PURPOSE: This rule is being amended due to TAFP CCS HCS SS SCS SB 22, enacted by the 94th General Assembly, and to clarify the exemption contained in section 144.062, RSMo, as it relates to fuel and to add exempt entities.

(3) Basic Application of Tax.

(D) Flow Through Project Exemptions—A contractor, including subcontractors working for the contractor, constructing, repairing or remodeling facilities for a specific exempt entity, may purchase tax exempt tangible personal property and materials incorporated into or consumed in the project if the exempt entity furnishes to the contractor a project exemption certificate. Tangible personal property and materials that can only be used for one construction, repair or remodeling job which are actually used up in performing the contract are consumed. Examples include sandpaper[, fuel to run equipment] and drill bits that are actually used up in the performance of the exempt contract. Items that are not consumed are hand tools, drinking water coolers, hardhats and bulldozers. For purposes of this flow through exemption an exempt entity is limited to:

1. Political subdivisions exempt under Article III section 39(10) of the *Missouri Constitution*;
2. Federal government and its instrumentalities;
3. Religious organizations;
4. Charitable organizations;
5. Elementary and secondary schools, public and private; [or]
6. Higher education institutions, public and private[.];
7. **Missouri Department of Transportation; or**
8. **Jackson County Sports Complex Authority.**

AUTHORITY: section 144.270, RSMo [1994] 2000. Original rule filed June 13, 2000, effective Dec. 30, 2000. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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, Legal Services Division, Governmental Affairs Bureau, 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.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 400—Individual Income Tax**

PROPOSED AMENDMENT

12 CSR 10-400.250 Computation of an Individual's Missouri Adjusted Gross Income on a Combined Income Tax Return. The director proposes to amend section (1).

PURPOSE: This rule is being amended to include additional sectional references due to the recent passage of TAFP SS HCS HB 453, enacted by the 94th General Assembly, 2007.