



Businesses Qualifying for Chapter 100 Financing

MUNICIPALITIES AND BUSINESSES

Pursuant to Section 536.010(6)(c)RSMo, this document is an intergovernmental memorandum developed to provide guidance to Municipalities and Political Subdivisions regarding Chapter 100 bonds and projects for industrial development. This document explains the application of sales and use tax on purchases of tangible personal property and other materials for constructing, repairing, or remodeling facilities that are industrial development projects financed with bonds issued under Chapter 100, RSMo. This document also explains the application of sales and use tax on Chapter 100 projects approved by the Department of Economic Development under Section 144.054.3, RSMo.

OVERVIEW OF CHAPTER 100 BONDS AND PROJECTS FOR INDUSTRIAL DEVELOPMENT

Industrial development bonds under Chapter 100 may be issued by any city, county, town or village (referred to as a “municipality”) to finance the costs of offices, warehouses, distribution facilities and industrial plants. In connection with such projects, the bond proceeds may be used to finance land, buildings, fixtures and machinery.

Sections 100.010 to 100.200, RSMo,¹ allow a municipality to issue revenue bonds, usually through a bond trust, and use the proceeds to purchase, construct, and improve various types of facilities. Bond proceeds may also be used to purchase fixtures, machinery, and equipment for industrial facilities and office industry facilities. The municipality leases the facility to a business once construction is completed. The municipality uses the lease payments to pay the bond holders. The municipality may transfer the facility to the business for a token payment upon retirement of the bonds. This is commonly described as a Chapter 100 project.

DEFINITIONS

Under § 100.010(6), a Chapter 100 project for industrial development is:

[T]he purchase, construction, extension and improvement of warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, service facilities which provide interstate commerce, and industrial plants, including the real estate either within or without the limits of such municipalities, buildings, fixtures, and machinery[.]

“Facility” is defined under § 100.010(2) as:

[A]n industrial plant purchased, constructed, extended or improved pursuant to sections 100.010 to 100.200, including the real estate, buildings, fixtures and machinery[.]

“Office industry” is defined under § 100.010(5) as:

[A] regional, national, or international headquarters, a telecommunications operation, a computer operation, an insurance company, or a credit card billing and processing center[.]

“Revenue bonds” are defined under § 100.010(7) as:

[B]onds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by a municipality and secured by revenues of a project for industrial development.

¹ All statutory citations are to the Revised Statutes of Missouri of 2000, as amended, unless otherwise noted.



SALES AND USE TAX AND TANGIBLE PERSONAL PROPERTY

Chapter 100 does not address the sales or use tax consequences of purchasing tangible personal property for Chapter 100 projects, such as the fixtures, equipment, or machinery that may be purchased with Chapter 100 bond proceeds. Purchases of tangible personal property made from proceeds of Chapter 100 bonds for industrial development projects are not categorically exempt from sales and use tax.

Chapter 144 governs the taxation of tangible personal property and should be considered in determining whether a particular purchase used for the Chapter 100 project is subject to sales or use tax.

Pass-Through Exemption under Section 144.062

Section 144.062 exempts from tax purchases of tangible personal property and materials used in constructing, repairing, or remodeling real property for certain organizations and political subdivisions. Section 144.062.1 exempts, in part, “tangible personal property and materials for the purpose of constructing, repairing or remodeling facilities for: (1) a county, other political subdivision, or instrumentality thereof exempt from taxation under subdivision (10) of section 39 of article III of the Constitution of Missouri”

The tangible personal property must be related to the exempt functions and activities of the political subdivision to qualify for the exemption under Section 144.062. Projects for industrial development under Chapter 100 are deemed exempt functions and activities of a political subdivision for purposes of Section 144.062.

Projects qualifying for Chapter 100 financing are: warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, service facilities that provide interstate commerce, and industrial plants, including the real estate, buildings, fixtures, and machinery. Therefore, with a valid project exemption certificate and a copy of the political subdivision’s exemption letter, purchases of tangible personal property, fixtures, and materials for construction, extension, and improvement for these Chapter 100 projects are exempt from sales or use tax.

Projects consisting of retail businesses, such as retail stores, hotels, amusement parks, and theaters, do not qualify for Chapter 100 financing and are not exempt functions or activities of a political subdivision.

Although Section 144.062 exempts tangible personal property used for the purpose of constructing, repairing, or remodeling facilities, the statute does not exempt equipment or machinery. The exemption under Section 144.062 also does not exempt purchases of tangible personal property that do not become part of the real property. Therefore, such purchases made for purposes of a Chapter 100 project are not exempt from sales tax under Section 144.062.

Any excess property or materials are subject to sales or use tax unless returned to the supplier for credit. Section 144.062.4 provides:

[A]ny excess resalable tangible personal property or materials which were purchased for the project by a contractor under a project exemption certificate but which were not incorporated into or consumed in the construction of the project shall either be returned to the supplier for credit or the appropriate sales or use tax on such excess property or materials shall be reported on a return and paid by such contractor

Section 144.054 Exemption Approval by the Department of Economic Development

Under Section 144.054, the sale or lease of tangible personal property is exempt from sales tax if the tangible personal property is authorized under Chapter 100 and the development project is certified by the Department of Economic Development prior to placing such tangible personal property into service. Section 144.054.3, RSMo, exempts:

[A]ll sales and leases of tangible personal property by any county, city, incorporated town, or village, provided such sale or lease is authorized under chapter 100, and such transaction is certified for sales tax exemption by the department of economic development



The business must apply for an exemption with the Department of Economic Development, which will determine the maximum dollar amount of purchases that may qualify for the exemption. Certification must be obtained prior to placing the tangible personal property into service. Note that Chapter 100 financing is not available for retail businesses, including but not limited to stores, restaurants, theaters, and hotels. Eligible tangible personal property integral to the company's primary business activity under Chapter 100 would generally qualify for the exemption. Examples of ineligible personal property include, but are not limited to, break room refrigerators and dishwashers, exercise room equipment, and artwork.

The municipality and the business must enter into the lease agreement before the Department of Economic Development will review an application for certification of the project under Section 144.054.

Other Exemptions

If a Chapter 100 development project is not certified by the Department of Economic Development, the lease of tangible personal property by the municipality will be subject to sales and use tax unless a specific exemption applies. For example, typical exemptions that may otherwise be claimed under Section 144.030.2, RSMo, include:

- Sub-paragraphs (5) and (6) exempt from sales or use tax for machinery used to produce a product which is intended to be sold ultimately for final use or consumption.
- Sub-paragraph (7) exempts machinery used in producing products for the United States government.
- Sub-paragraph (9) exempts machinery used to produce a newspaper.
- Sub-paragraphs (34) and (38) exempt tangible personal property used directly in research activities performed by certain pharmaceutical and life science companies.

As indicated above, there are numerous exemptions for tangible personal property under Chapter 144 that may be available to exempt from sales tax the lease of tangible personal property to a business under Chapter 100. However, there are industries that generally do not have an exemption available for leasing tangible personal property. For example, warehouse and distribution businesses and several office industries do not have a sales tax exemption under Chapter 144 other than that allowed under Section 144.054. Therefore, leases of tangible personal property by a municipality to these industries are subject to sales tax unless the Department of Economic Development certifies the project. As mentioned above, Chapter 100 financing is not available for retail businesses, including but not limited to stores, restaurants, theaters, and hotels. Eligible tangible personal property integral to the company's primary business activity would generally qualify for the exemption. Examples of ineligible personal property include, but are not limited to, break room refrigerators and dishwashers, exercise room equipment, and artwork.

CHAPTER 100 PROJECT IN PRACTICE

Municipalities

A municipality is the owner of the facility, plant, or other structure financed by Chapter 100 bonds. The municipality enters into an agreement with a contractor to construct the facility. The municipality owns all fixtures, equipment, and tangible personal property included in the facility. The municipality and the business enter into a lease agreement. The business leases the facility, as well as the fixtures, equipment, and tangible personal property included in the facility, from the municipality.

Purchases of tangible personal property by a municipality are exempt from sales and use tax under Section 144.030.1, RSMo. The lease of the facility and fixtures by the municipality does not involve the lease of tangible personal property and is not subject to tax. However, the lease of equipment, furniture, and other tangible personal property is subject to tax unless otherwise exempt.

If tax is paid by the contractor or the business on the purchase of the tangible personal property, the lease payments paid by the business to the municipality for the tangible personal property are not subject to tax. If the municipality makes purchases of



tangible personal property and no tax has been paid on these purchases, payments for the lease of the tangible personal property are subject to sales tax.

If the business has a valid exemption under Chapter 144, the lease of the tangible personal property is exempt from sales tax. The municipality must obtain an exemption certificate from the business. If an exemption certificate is not obtained, the municipality must charge sales tax on the lease of the tangible personal property.

The Department of Revenue through its audit function may conduct audits to ensure that only qualifying purchases receive the proper exemption application. The qualifying businesses under Chapter 100 do not include retail businesses such as stores, restaurants, theaters, and hotels. All purchases for these businesses are subject to tax. The issuer of the project exemption letter should restrict such purchases to only those businesses that qualify under Chapter 100. Ineligible purchases generally include break room refrigerators and dishwashers, exercise room equipment, and artwork. The municipality will be liable for sales tax on purchases of materials used for real property improvements for ineligible businesses. The municipality will also be liable for sales tax on the leases of ineligible tangible personal property.

Contractors

The contractor is hired by the municipality to construct the facility, plant, or other structure that is financed by Chapter 100 bonds.

The municipality provides the contractor with its sales tax exemption letter and its project exemption certificate (Form 5060 - <http://dor.mo.gov/forms/5060.pdf>) according to Section 144.062.1. The contractor may only use the project exemption certificate to purchase materials and tangible personal property for constructing, repairing, or remodeling a facility owned by the municipality. A project exemption certificate does not exempt materials and tangible personal property purchased for purposes other than the construction, repair, or remodeling of the facility.

Occasionally, the contractor may purchase tangible personal property and equipment for the facility. These purchases do not qualify for exemption under Section 144.062.1. The contractor cannot use the municipality's exemption letter or the project exemption certificate for these purchases. The contractor must purchase these items exempt from tax as a resale to the municipality unless the municipality directs the contractor to pay tax on these items.

If the contractor pays tax on the purchase of tangible personal property, the lease payments paid to the municipality are not subject to sales tax. If the contractor does not pay the tax because it is a purchase for resale or the contractor used the municipality's exemption, the lease payments made to the municipality are subject to sales tax, unless exempt under another provision of Chapter 144.

Businesses

The business leases the facility and the fixtures, equipment, and tangible personal property included in the facility, from the municipality. After the bonds are retired, the business typically has the option to purchase the facility, fixtures, equipment, and other tangible personal property from the municipality.

Occasionally, the business may purchase tangible personal property for the facility with Chapter 100 bond proceeds. Because the municipality owns the facility and all tangible personal property purchased for the facility with Chapter 100 bond proceeds, the business makes these purchases for resale to the municipality.

If sales or use tax is paid on the purchase of the tangible personal property, the lease payments are not subject to tax. If tax is not paid on these purchases, the lease payments for the tangible personal property are subject to sales tax, unless exempt under another provision of Chapter 144.



SUMMARY

Purchases of materials for the construction or improvement of real property (i.e., facility, fixtures, and equipment) owned by a municipality are exempt from tax. The lease of the real property to a business is also exempt from tax. Tangible personal property to be leased by the municipality to the business is subject to tax unless sales or use tax was paid on the purchase; certification from the Department of Economic Development was obtained; or is otherwise exempt under Chapter 144. If you have any questions, please contact the Department of Revenue at (573) 751-2836.