

Industry and Association Guidance

Common and Other Carriers

The information contained in this document was developed to provide guidance to businesses operating as trucking companies. This document also provides guidance to businesses that own trucks and trailers that are actually used in the normal course of business to haul property on the public highways of the state and are registered in excess of 54,000 pounds. The following discusses the differences between the three types of carriers and the specific requirements to be considered a common carrier by the Department for purposes of Missouri tax law.

Carriers Registering Motor Vehicles with a gross weight registered in excess of 54,000 pounds

Effective August 28, 2012, an exemption was enacted to expand the sales tax exemption for businesses hauling property. New [section 144.030.2\(4\)](#) provides:

Motor vehicles registered in excess of fifty-four thousand pounds, and the trailers pulled by such motor vehicles, that are actually used in the normal course of business to haul property on the public highways of the state, and that are capable of hauling loads commensurate with the motor vehicle's registered weight; and the materials, replacement parts, and equipment purchased for use directly upon, and for the repair and maintenance or manufacture of such vehicles. For purposes of this subsection "motor vehicle" and "public highway" shall have the meaning as ascribed in [section 390.020](#).

As indicated above, motor vehicles must be registered in excess of 54,000 pounds, including trailers pulled by the vehicles, used in the normal course of business to haul property in Missouri to qualify for the sales tax exemption. Motor Vehicles that are registered under a specialized registration, such as local log trucks, are not exempt from sales tax under this new section.

Tractors with trailers must be capable of hauling loads equal to their registered weight. Businesses must file [Form 5435, Application for Sales Tax Exemption – Commercial Motor Vehicles/Trailers](#)

[Greater Than 54,000 Pounds](#) when registering the vehicle or trailer to receive the exemption.

In addition, materials, replacement parts, and equipment directly used on, or for the repair, maintenance, or manufacture of, these vehicles are also exempt from tax. This exemption may be claimed by any business hauling property, including common, contract, and private carriers. Businesses must complete [Form 149 Sales/Use Tax Exemption Certificate](#), and [Form 5435](#) and provide both forms to their suppliers.

Common Carriers Registering Motor Vehicles with a gross weight of 24,000 pounds or more

Carriers with motor vehicles registered for 24,000 pounds or more may purchase their motor vehicles exempt from tax if the carriers are common carriers. [Section 144.030.2\(12\)](#) provides an exemption for:

Railroad rolling stock for use in transporting persons or property in interstate commerce and **motor vehicles licensed for a gross weight of twenty-four thousand pounds or more or trailers used by common carriers**, as defined in [section 390.020](#), in the transportation of persons or property[.] (Emphasis added.)

What is the distinction between a common carrier and a contract or private carrier?

A *common carrier* is defined under [Section 390.020\(6\)](#), RSMo, as "any person which holds itself

out to the general public to engage in the transportation by motor vehicle of passengers or property for hire or compensation upon the public highways and airlines engaged in intrastate commerce[.]” In addition, as addressed in [Missouri Code of State Regulations 12 CSR 10-110.300\(2\) \(A\)](#), “[a] common carrier is required by law to transport passengers or property for others without refusal if the fare or charge is paid. To qualify as a common carrier, a carrier must be registered as a common carrier with all agencies that require such registration, such as the United States Department of Transportation.

A *contract carrier* is defined under [Section 390.020\(7\)](#), RSMo, as “any person under individual contracts or agreements which engage in transportation by motor vehicles of passenger or property for hire or compensation upon the public highway [.]” In addition, as addressed in [Missouri Code of State Regulations 12 CSR 10-110.300\(2\) \(B\)](#) “[a] contract carrier is a carrier that meets the special needs of certain customers to transport its passengers or property.”

A *private carrier* is defined under [Section 390.020\(23\)](#), RSMo, as “any person engaged in the transportation of property or passengers by motor vehicle upon public highways, but not as a common or contract carrier by motor vehicle; and includes any person who transports property by motor vehicle where such transportation is incidental to or in furtherance of his commercial enterprises[.]”

The regulatory and operational requirements to be treated as a common carrier for purposes of Missouri tax law are explained below.

What are the regulatory requirements to be considered a common carrier?

A carrier must be registered as a common carrier with all agencies that require such registration. The carrier also must obtain all pertinent licenses for its particular hauling needs.

How can a carrier establish that it is registered as a common carrier?

The Department will consider all active registrations, licenses and permits the carrier holds with the United States Department of Transportation and the State of Missouri

Department of Transportation, as well as active insurance coverage. The Department will also consider other active registrations, licenses, and permits held with other agencies, including: Federal Motor Carrier Safety Administration(FMCSA); USDOT Number Operating Authority; Interstate Operating Authority (MC#); Uniform Carrier Registration (UCR); International Fuel Tax Agreement License (IFTA License); and Missouri Department of Transportation (MODOT). The Department may consider other documentation or information in determining whether a carrier may qualify as a common carrier.

The carrier should provide copies of all required registrations, licenses, permits, and insurance contracts to verify its regulatory status as a common carrier.

What facts demonstrate that a business is operating as a common carrier?

As noted above, a carrier must meet regulatory and operational requirements to be considered a common carrier for purposes of Missouri tax law. As for operational requirements, whether a business is operating as a common carrier is a question of fact. No single fact is determinative, and all facts are considered in each situation.

Facts supporting the conclusion that a business is in fact operating as a common carrier include:

- Transportation of property or passengers without refusal or discrimination if the fare or charge is paid
- Published rates or fares
- Reasonable rates or fares
- Published routes
- All required registrations, licenses, permits and insurance
- Carrier represents itself and holds itself out to the general public as a common carrier
- General public recognition as a common carrier
- Revenue generated through common carrier activities substantially contributes to the financial requirements of the carrier’s operations
- Sufficient income from freight transportation charges to reflect that its common carrier operations are a viable part of its business

Facts supporting operation as a contract carrier:

- Lack of registration, license, permits, and insurance
- Negotiated contracts, including rates, delivery terms, and schedules
- Refusal to transport property or passengers when carrier has space or seats available
- Discrimination in accepting property or passengers
- Lack of published rates, fares, or routes
- Little or no representation to the general public as a common carrier
- Income from carrier operations primarily derived from private arrangements
- Revenue generated through common carrier activities is an insignificant part of the carrier's operations

What constitutes holding oneself out to the public as a common carrier?

According to the Missouri Supreme Court, "Holding out can be accomplished by advertising or soliciting by agents, or may result from a course of business or conduct, but essentially must be a public offering of the service that communicates that it is available to those who wish to use it." *Cook Tractor Co., Inc. v. Director of Revenue*, 187 S.W.3d 870, 874 (Mo. banc 2006).

The carrier must hold itself out to the public as engaging in the transportation of passengers or property for hire, and state the types of freight hauled and the applicable rates and routes. The public must also be aware that the company is, in fact, operating as a common carrier.

Generally, advertising only on a company's website is not sufficient as holding out for hire as a common carrier. The Department will consider advertising and contracting with freight brokers, freight forwarders and shipping agents, in addition to other means of holding out to the public as a common carrier.

Businesses must file [Form 5095, Sales or Use Tax Exemption Statement for Authorized Common Carriers](#), when registering a vehicle or trailer to receive the common carrier tax exemption. Businesses that do not qualify for the common carrier tax exemption and haul loads in excess of 54,000 pounds must complete [Form 5435, Application for Sales or Use Tax Exemption –](#)

[Commercial Motor Vehicles/Trailers Greater than 54,000 Pounds](#), to apply for an exemption from sales or use tax.

In addition, materials, replacement parts, and equipment directly used on the repair maintenance or manufacture of these vehicles are also exempt from tax. This exemption may be claimed by any business hauling property, including common, contract, and private carriers. Businesses must complete [Form 149 Sales/Use Tax Exemption Certificate](#) and attach [Form 5435](#), and provide both forms to their suppliers.