

## 12 CSR 10-113.200 Determining Whether a Transaction is Subject to Sales Tax or Use Tax

**PURPOSE:** Chapter 144, RSMo, contains the statutory provisions governing application of sales and use tax. This rule explains how to determine whether a transaction is subject to sales tax or use tax. This rule also explains what transactions are exempt from sales tax under the interstate commerce exemption in section 144.030.1, RSMo.

(1) In general, a sale of tangible personal property is subject to sales tax if title to or ownership of the property transfers in Missouri unless the transaction is in commerce. The seller must collect and remit the sales tax. If a sale is not subject to Missouri sales tax but the property is stored, used, or consumed in Missouri, the transaction is subject to use tax. If the transaction is subject to use tax and the seller has nexus with Missouri, the seller must collect the tax at the time of the sale and remit it to the department. If the seller does not collect the tax, the buyer must pay use tax directly to the department. If a sale of tangible personal property is not subject to Missouri sales tax and the property is not stored, used, or consumed in this state, no Missouri tax is due. A sale of a taxable service is subject to sales tax if the service is performed in Missouri. If the service is not performed in Missouri, the sale is not subject to tax.

(2) Definition of Terms.

(A) Nexus—contact with the state.

(B) In commerce—a transaction is in commerce if the order is approved outside Missouri and the tangible personal property is shipped from outside Missouri directly to the buyer in Missouri.

(3) Basic Application of Taxes.

(A) Title transfers when the seller completes its obligations regarding physical delivery of the property, unless the seller and buyer expressly agree that title transfers at a different time. A recital by the seller and buyer regarding transfer of title is not the only evidence of when title passes. The key is the intent of the parties, as evidenced by all relevant facts, including custom or usage of trade.

(B) Unless otherwise agreed by the parties, when a Missouri seller delivers tangible personal property to a third-party common or contract carrier for delivery to an out-of-state location, title does not transfer in Missouri and the sale is not subject to Missouri sales tax. A buyer that carries its own goods is not acting as a common or contract carrier.

(C) When an out-of-state seller delivers tangible personal property to a third-party common or contract carrier for delivery to Missouri, title transfers in Missouri. If delivery is made to seller or an agent of seller (other than a third-party common or contract carrier) in Missouri and subsequently delivered to the buyer in Missouri, the sale is subject to Missouri sales tax. If delivery is made directly from the out-of-state seller to the buyer in Missouri, the sale is subject to sales tax if the order was approved in Missouri. If the order was approved outside Missouri, the sale is not subject to sales tax, but the transaction is subject to use tax unless otherwise exempt.

(D) Leases of tangible personal property generally follow the same taxing guidelines as sales of tangible personal property. Leases of tangible personal property by Missouri lessors are subject to sales tax if the lessee obtains possession in Missouri. Leases of tangible personal property by non-Missouri lessors are subject to Missouri sales tax if the tangible personal property is located in Missouri prior to entering the lease and the lessee obtains possession in Missouri. Leases of tangible personal property that are not subject to sales tax are subject to use tax if the lessee stores, uses, or consumes the tangible personal property in Missouri.

#### (4) Examples.

(A) A seller accepts orders in Missouri. The seller fills orders from its warehouses located both within and without Missouri. A customer orders goods from the seller in Missouri. The order is filled from an out-of-state warehouse and shipped directly to the customer. The transactions are subject to sales tax because the order is accepted in Missouri.

(B) A customer purchases custom fabricated goods from a Missouri seller. The order for the goods must be approved at the seller's out-of-state headquarters. The goods will be shipped by the seller directly from the out-of-state facility to the customer's Missouri location. The sale is subject to use tax because the order was approved out-of-state and the goods were shipped from out-of-state directly to the customer in Missouri. The seller must collect and remit the use tax.

(C) A Missouri seller sells pens, calendars, cups and similar items with the customer's logo printed on them. The seller sends the orders to an out-of-state supplier to custom print the items that are drop shipped directly to the customer in Missouri. The sale is subject to sales tax because the customer's order taken by the seller is approved in Missouri.

(D) While visiting Missouri, an Illinois resident purchases a set of luggage at a Missouri department store. The buyer requests the seller to ship the luggage to an

Illinois address. The sale is not subject to Missouri sales or use tax because title does not transfer in Missouri.

(E) An out-of-state customer purchases a kitchen table set from a Missouri seller. Under the terms of the sale, the seller is to ship the set to a Missouri location for storage until the customer is able to arrange to pick up the set with its truck or by third-party carrier. The sale is subject to sales tax.

(F) An Illinois construction contractor leases a backhoe from an Illinois lessor. Prior to entering the lease, the backhoe was located in Missouri. The contractor takes possession of the backhoe at the Missouri location. The lease is subject to sales tax.

(G) A seller has no place of business in Missouri. A sales representative who works from a non-Missouri location visits Missouri customers. All orders are accepted outside Missouri and goods are shipped to Missouri customers from outside the state. The seller must collect and remit use tax.

(H) A seller has a location in Missouri. A Missouri customer places an order directly with the seller's non-Missouri location via email. The goods are shipped directly to the Missouri customer from the non-Missouri location. The Missouri office does not participate in the sale. The seller must collect and remit use tax.

(I) An out-of-state vendor markets tangible personal property to Missouri residents via online and televised advertisements. The vendor does not own the items it markets. Instead, the vendor contracts with a third-party supplier to maintain and ship items purchased from its online and televised advertisements. A Missouri resident purchases a marketed item. Vendor instructs the third-party supplier to ship the purchased item to the Missouri resident. The third-party supplier ships the item via common carrier to the Missouri resident. Title transfers from the third-party supplier to vendor in Missouri at the Missouri resident's home. Title then transfers from the vendor to the Missouri resident. The vendor must collect and remit sales tax.

**AUTHORITY:** sections 144.270 and 144.705, RSMo 2016.\* Original rule filed Jan. 10, 2002, effective July 30, 2002. Amended: Filed Jan. 10, 2023, effective July 30, 2023.

\*Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961, 2008, and 144.705, RSMo 1959.