

## TITLE 12—DEPARTMENT OF REVENUE

### Division 10—Director of Revenue

#### Chapter 107—Sales/Use Tax—Exemption Certificates

##### 12 CSR 10-107.100 Use of and Reliance on Exemption Certificates

**PURPOSE:** Section 144.210, RSMo, requires sellers to obtain and maintain an exemption certificate when a purchaser claims a sale is exempt from tax. Section 32.200, RSMo, relieves a seller from liability for tax if the seller receives and accepts an exemption certificate in good faith. This rule describes procedures for sellers to follow when accepting exemption certificates.

(1) In general, a seller that receives and accepts an exemption certificate in good faith is not required to collect and remit tax on a sale covered by the exemption certificate. If the exemption certificate accepted in good faith is not valid, the purchaser is liable for the tax.

(2) Definition of Terms.

(A) Exemption certificate—A certificate signed by the purchaser and provided to the seller that specifies the basis for the purchaser's claim of exemption. A copy of a letter of exemption issued by the department to an exempt entity and delivered to a seller is equivalent to an exemption certificate for purposes of this rule.

(B) Good faith—Honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry. Also see 12 CSR 10-101.500(2)(B), Burden of Proof.

(C) Burden of Proof—Burden of persuading the finder of fact that the existence of a fact is more probable than the nonexistence.

(3) Application of Rule.

(A) The seller must obtain and maintain exemption certificates for any exempt sales. If the seller does not have an exemption certificate for a sale it claims was exempt, the seller may be held liable for the tax.

(B) The seller must indicate on each invoice or bill of sale the name of the purchaser claiming the exemption.

(C) If a seller has an exemption certificate from the purchaser on file, the seller may rely on the certificate on file for future sales unless—

1. The certificate, by its terms, does not apply to the transaction; or
2. The seller can no longer rely in good faith on the certificate.

(D) A document issued by the purchaser stating that a specific transaction is subject to tax requires the seller to collect tax on the transaction, even if it contradicts the purchaser's prior claim of exemption. A claim of exemption issued by the purchaser relating to a specific transaction applies only to that transaction and is not a general claim of exemption.

(E) If a purchaser gives the seller an exemption certificate claiming an exemption that the purchaser is not entitled to claim, or if the purchaser subsequently uses the tangible personal property in a manner inconsistent with the purchaser's claim of exemption, then the purchaser is liable for the tax. If sales tax should have been paid on the original purchase, then the purchaser should report and remit sales tax based on the location of the seller. If use tax should have been paid on the original purchase, then the purchaser should report and remit use tax based on the location of the purchaser. If the purchaser cannot determine whether the goods are subject to sales or use tax, the goods are subject to the sales tax rate at the location of the purchaser.

(F) If a seller does not act in good faith when accepting an exemption certificate, the seller and purchaser are jointly liable for the amount due.

#### (4) Examples.

(A) A Joplin grocery store buys two (2) dozen mops for resale from a seller in St. Joseph, Missouri, and delivers an exemption certificate. The grocery store then removes six (6) of these mops from stock for use in cleaning the store. The grocery store is subject to sales tax on the actual cost of the six (6) mops removed from stock based on the rate in effect at the seller's St. Joseph location.

(B) A Missouri seller has an exemption certificate on file from a Missouri purchaser. Therefore, the seller should not collect tax from the purchaser. On a future purchase, the purchaser issues a purchase order stating that the purchase is taxable. The seller must collect and remit tax on the transaction.

(C) A seller claims a number of sales are exempt from tax. The seller's invoices do not identify the purchasers. Unless the seller can otherwise establish the validity of the exemptions, the seller must remit tax on these sales.

(D) A retailer has an unsigned exemption certificate from a customer. The retailer does not charge tax on the sales it makes to that customer. The retailer is liable for tax on the sales to that customer, because an unsigned exemption certificate is not valid.

(E) An out-of-state seller sells to a Missouri customer. The Missouri customer issues an exemption certificate, which is taken in good faith. The out-of-state seller should not collect or remit Missouri tax. The Missouri buyer must report and remit tax if the items are not exempt.

AUTHORITY: section 144.270, RSMo 2016.\* Original rule filed Oct. 25, 2004, effective May 30, 2005. Amended: Filed May 10, 2005, effective Nov. 30, 2005. Amended: Filed July 25, 2023, effective March 30, 2024.

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

All Star Amusement, Inc. v. Director of Revenue, 873 S.W.2d 843 (Mo. banc 1994). A seller that accepts an exemption certificate in good faith is not required to collect and remit tax on the sale. There is no requirement that a seller accept an exemption certificate contemporaneously with the sale or that the certificate be dated to fulfill the good faith requirement. However, the fact that an exemption certificate is received after the sale or is not dated may influence a factual finding on the issue of the seller's good faith.

Conagra Poultry Co. v. Director of Revenue, 862 S.W.2d 915 (Mo. banc 1993). In order to accept an exemption certificate in good faith, a seller must act with honesty of intention and freedom from knowledge that ought to put the seller on notice. When seller prepared the exemption certificates two (2) years after the transaction and obtained the buyer's signatures, the seller did not act in good faith.

Director of Revenue v. Armco, Inc., 787 S.W.2d 722 (Mo. banc 1993). Failure by seller to provide exemption certificates at time of department audit forfeited the right to claim the sales were exempt.

Cadwell Supermarket, Inc. v. Director of Revenue (AHC 1997). When seller's employees personally knew the buyers were purchasing for exempt purposes, failure to obtain exemption certificates did not defeat the exemption claim.