

12 CSR 10-112.300 Sales to the United States Government and Government Contractors

PURPOSE: This rule explains the tax consequences of transactions involving the United States government and government contractors including the exemptions and exclusions provided by sections 144.030.1 and 144.030.2(6), RSMo.

(1) In general, sales to the United States government are exempt from tax. Tax does not apply to items purchased by government contractors for resale to the United States government. In addition, tangible personal property used exclusively in the manufacturing, modification or assembling of products sold to the United States government is exempt from tax.

(2) Definition of Terms.

(A) Government contractor—a business or individual which enters into an agreement with the United States government to provide products or services to the government in exchange for payment. This includes businesses or individuals that contract with the United States government to operate facilities owned by the United States government. As used in this regulation, this term is not limited to businesses that perform improvements to real property (i.e., construction contractors).

(B) Ownership—the right to exercise dominion and control over property. A person who has the right to designate who is to receive title to the property has an ownership interest in the property.

(C) Purchaser—a person who receives title or ownership to property in return for payment or consideration.

(D) United States government—any entity comprising a part of the government of the United States of America, including but not limited to, any United States government agency and any branch of the armed forces of the United States. Federal savings and loan associations and national banks are not included in this definition.

(3) Basic Application of the Tax.

(A) Sales to the United States government are exempt from tax under the doctrine of intergovernmental immunity and section 144.030.1, RSMo, which provides an exemption from tax for any transaction which the state of Missouri is prohibited from taxing under the Constitution or laws of the United States. This exemption applies only to sales in which the United States government is the purchaser.

1. If a government contractor receives title or ownership to property to be used in the performance of a government contract, the government contractor (not the United States government) is the purchaser of the property. The sale is not exempt from tax under the doctrine of intergovernmental immunity.

2. When property is purchased pursuant to a government contract or purchase order that provides that title to the property will pass directly from the seller to the United States government, and the United States government also controls the disposition and use of the property so that the contractor does not obtain ownership to the property, then the United States government is the purchaser of the property for sales tax purposes. The sale is exempt from tax. The exemption applies in these circumstances, even if the government contractor remits payment to the seller for the property.

(B) The resale exclusion applies to property purchased by government contractors and resold to the United States government. The purchase of property for resale is not subject to tax; and the resale of property by a government contractor to the United States government is also not subject to tax.

1. Some United States government contracts incorporate standard contract clauses from the Federal Acquisition Regulations or similar contract clauses that state that title to property purchased by the government contractor pursuant to the contract shall vest in the United States government. The transfer of title under these title vesting clauses can result in a resale of the property by the government contractor to the United States government.

2. In some cases the cost of the property purchased by a government contractor is allocated among a number of different contracts. Under these circumstances, the resale exclusion would apply only to that portion of the cost that is allocated to contracts that include the title vesting clauses. Under the title vesting clauses, the United States government does not receive title to property that is leased by a government contractor for use in a government contract, since the government contractor does not receive title to the leased property. The resale exclusion does not apply to property leased for use in the performance of a government contract.

(C) Tangible personal property which is used exclusively in the manufacturing, processing, modification or assembling of products to be sold to the United States government is exempt from tax pursuant to section 144.030.2(6), RSMo.

1. This exemption does not apply to property used for any functions other than manufacturing, processing, modification or assembling, even if such use is minor. Nor does it apply to property used, even partially, for functions relating to the production of products for customers other than the United States government.

2. This exemption applies to any item of tangible personal property that otherwise qualifies for the exemption, including machinery, equipment, parts, materials and supplies.

(4) Examples.

(A) The U.S. Department of Agriculture purchases desks and office supplies for use in its offices. The sale is exempt from tax under the doctrine of intergovernmental tax immunity.

(B) A corporation enters into a contract with the U.S. Army to operate a plant where ammunition will be produced. The contract gives the Army the right to control the use and disposition of any property purchased in connection with the contract. The contract incorporates a title vesting clause found in Federal Acquisition Regulation 52.245-5. The corporation orders bins that will be used for storing inventory in a warehouse that is part of the facility. The corporation orders the bins using purchase orders that state the U.S. Army will receive title to the bins directly from the seller. The corporation pays the seller for the bins, and is later reimbursed for this expense by the Army. Under these facts, the Army is the purchaser of the bins, and the transaction is exempt from tax.

(C) A corporation enters into a contract with the U.S. Air Force requiring the corporation to build and deliver six (6) airplanes. The contract incorporates the title vesting clause found in Federal Acquisition Regulation 52.232-16. The corporation also manufactures airplanes for commercial airlines. After it signs the Air Force contract, the corporation purchases office supplies that cost ten thousand dollars (\$10,000). Based on allocation formulas that the Air Force reviews and approves, one-tenth (1/10) of this expense (\$1,000) is charged to the Air Force contract. The remaining costs are not charged to government contracts. The corporation has purchased one-tenth (1/10) of the office supplies for resale to the Air Force, and owes no tax on one thousand dollars (\$1,000). The corporation owes tax on the remaining nine thousand dollars (\$9,000) of this purchase.

(D) The same corporation leases forklifts for use in its plant. Some of the forklifts are used from time-to-time in connection with the Air Force contract. Based on allocation formulas that the Air Force reviews and approves, one-twentieth (1/20) of the charges for leasing the forklifts is charged to the Air Force contract. The resale exclusion does not apply to this transaction. The lease payments are taxable unless some other exemption to tax applies to the lease (e.g., the lease payments may be exempt because the lessor has paid tax on its purchase of the forklifts pursuant to section 144.020.1(8), RSMo).

(E) The same corporation purchases special paints and adhesives that are used in the manufacture of the Air Force airplanes, and for no other purpose. These supplies are exempt from tax under section 144.030.2(6), RSMo.

AUTHORITY: sections 144.270 and 144.705, RSMo 2016.* Original rule filed Nov. 10, 1999, effective May 30, 2000. Amended: Filed July 17, 2023, effective Feb. 29, 2024.

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

United States v. Lohman, 74 F.2d 863 (8th Cir. 1996). Sale of electricity used in an Army ammunition plant was an exempt sale to the United States government where the government entered into the sales contract with the power company, and title to the electricity passed directly from the power company to the government. Although a corporation operated the plant and paid the power company for the electricity, the court ruled that the government, not the corporation, was the purchaser of the electricity.

Olin Corp. v. Director of Revenue, 945 S.W.2d 442 (Mo. banc 1997). Government contractor that paid sales and use tax on tangible personal property used in its performance of a contract with the United States government was entitled to a refund of the tax, because the government was the purchaser of the property. Under the contract and purchase orders, title to the property passed directly from the sellers to the government. The contract gave the corporation no discretion in designating who was to receive title to the property. In addition, the corporation's use of the property was "severely limited" by the contract's specifications. Under these facts, the court found that the corporation did not receive ownership or title to the property, and was not the purchaser of the property.

McDonnell Douglas Corp. v. Director of Revenue, 945 S.W. 437 (Mo. banc 1997). Overhead materials and supplies purchased by government contractor, the cost of which were allocated to government contracts that included title vesting clauses, were resold to the government by the contractor. Accordingly, the government contractor's purchase of these items was for resale, and exempt from tax.