



MBA Broadcasting Sales Tax Exemption

History

- Missouri Supreme Court's unanimous decision that telecommunication industry was manufacturing a product (2002)
- Missouri Broadcaster's Association started refund/legislative effort in August 2005
- 2006 session – bill failed mainly due to confusion over collection point of tax
- 2007 session
 - ❖ We successfully identified a specific source, updated annually, showing percentage of all products sold represents advertising (Schonfeld and Associates)
 - ❖ Agreed to not pursue refunds under Southwestern Bell decision
 - ❖ Passed legislation in Senate Bill 30, signed into law by Governor Blunt, codified as section 144.054, RSMo, and effective August 28, 2007.
 - ❖ Monitored administrative rule
 - ❖ Requested and received favorable letter ruling from Missouri Department of Revenue

The Law

Section 144.054, subsection 3:

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“...In addition to all other exemptions granted under this chapter, there is hereby specifically exempted from the provisions of sections 144.010 to 144.525 and 144.600 to 144.761, and section 238.235, RSMo, and the local sales tax law as defined in section 32.085, RSMo, and from the computation of the tax levied, assessed, or payable under sections 144.010 to 144.525 and 144.600 to 144.761, and section 238.235, RSMo, and the local sales tax law as defined in section 32.085, RSMo, all utilities, machinery, and equipment used or consumed directly in television or radio broadcasting... “

.....

The Official Regulation**“12 CSR 10-110.210 Television and Radio Broadcasters**

PURPOSE: This rule explains the television and radio broadcasters sales tax exemption.

(1) In general, radio and television broadcasters are exempt from sales and use tax, both state and local, on purchases of utilities, machinery, and equipment used or consumed directly in the broadcasting of their programs.

(2) Definition of Terms.

(A) Broadcaster— An entity who transmits (a radio or television signal) over the airwaves for public or general use. A cable or satellite provider is not a broadcaster.

(3) Basic Application.

(A) A Missouri radio or television station purchases utilities, machinery and equipment for use directly in the broadcasting of their programming. The purchase of the utilities, machinery and equipment are not subject to state or local tax.”

The Letter Ruling (LR4156)**“Television Broadcasting**

December 28, 2007

Dear Applicant:

This is a letter ruling issued by the Director of Revenue pursuant to Section 536.021.10, RSMo, and Missouri Code of State Regulations 12 CSR 10-1.020 in response to your letter dated August 21, 2007. The deadline for issuing this letter ruling was extended by mutual agreement between the parties to allow time for an on-site visit for informational purposes in responding to this request.

The facts as you presented them in your letter and as observed by General Counsel Rochelle Reeves during an on-site visit are summarized as follows:

Applicant owns and operates a television broadcasting station in Missouri. Applicant states that all areas of Applicant's television broadcast operation function together. Applicant has several departments or areas within the station, which include:

1. Traffic Department—involved in all phases of television programming, including controlling the broadcast schedule for all programs and advertisements through the creation and use of the traffic log. The traffic log is the broadcasting roadmap that shows the scheduled programming and advertising, when the programming and advertising was actually run, and a detailed permanent record of the broadcasting operation for the day. Such data is prepared and modified throughout the day. The traffic log is retained for six years. Discs and other media, such as “as run” discs, show the variances between the scheduled programming and the actual broadcast. These discs are reused in the department.
2. Television Studio Areas—staging area for news, weather, sports, and other programs that originate within the broadcast facility.
3. Production Area—contains the assignment desk, photographers, reporters, script writers, editors, production assistants, engineers, producers, and all associated machinery and equipment. These areas are responsible for assignment and dispatch of reporters to investigate and gather news for stories, editorial meetings, development of scripts, and writing news and other information to be used in the television broadcasts.
4. Advertising Department—responsible for the sale of advertising time that provides the revenue source for the entire broadcasting operation. It is also responsible for production and preparation of commercial advertisements for broadcast. Advertising customers may supply their own commercial advertisement footage or the department may create and produce advertising footage for the customer.
5. Internet Broadcast Department—performs all computer programming and other functions necessary for translation of the broadcast programming into a form that is then provided via the Internet. Television newscasts are broadcasted nearly simultaneously over the Internet and through the station's transmitter, and content is enhanced with video-on-demand and text versions of the television broadcast news stories. Live weather and weather-related stories are also provided via the Internet.
6. Technical and Engineering Areas—provide studio control, signal acquisition, and perform services essential to television broadcasting.
7. Graphic Arts Area—provides all graphics used in the broadcasting.
8. Executive and Administrative Office Areas—consist of several types of offices, which includes:
 - a. Executive offices of the president, general manager, and the senior vice president. There are three (3) offices in this area. These executives provide executive level management services;
 - b. Administrative offices of the business manager and human resources department. There are two (2) offices in this area. These management-level professionals provide management and control of on-air personalities, reporters, editors, producers, and other employees that are an essential part of television broadcasting;
 - c. Accounting and traffic offices. There are five (5) offices in this area that work together to produce and reconcile the traffic log and to generate billings for

- advertising that is actually broadcasted. The accounting office receives an “as run” disc from the master control operator everyday that is used to reconcile the log and bill the advertising customers;
- d. Programming offices. There are two (2) offices in this area. The programming offices determine the daily and weekly programming schedules and negotiate and purchase the syndicated programs that are aired at the television broadcasting station. These offices house personnel who provide communication between the local broadcasting station and the national network affiliate; and
 - e. Sales offices. There are sixteen (16) offices in this area. The sales department is responsible for advertising sales. When a person sells an advertising schedule, a contract is created and entered directly into the traffic department’s software to make the required entries on the traffic log and schedule the actual broadcast of the television advertisements. Television advertising provides the revenue source for the television broadcast station and comprises a significant portion of the actual television broadcasts.

Aircraft and motor vehicles are leased and/or purchased by Applicant for the sole purpose of news gathering and remote broadcasting activities.

Remote transmitting, audio recording, and video recording equipment are purchased and/or leased for news gathering purposes and remote television broadcasting. Such equipment is also used at remote broadcast transmitter sites. Cellular telephones and cellular telephone services are purchased and used by Applicant to allow reporters and other personnel to communicate with the television broadcasting facility during news gathering activities and in remote broadcasts. In some cases, the cellular telephone is used to coordinate live remote broadcasts or used by a reporter to participate in the broadcast.

Utilities, machinery, and equipment are purchased and leased at a remote broadcast transmitter site. The transmitter is an essential element of television broadcasting. All utilities, machinery, and equipment at the remote broadcast transmitter site are dedicated to the operation of the transmitter and used directly in television broadcasting.

ISSUE 1:

Are the purchases of utilities, machinery and equipment used in Applicant’s executive and administrative office areas (as described in paragraph eight (8) of the facts) exempt from state and local sales and use tax under Section 144.054.3, RSMo?

RESPONSE 1:

No, the purchases of utilities, machinery and equipment used in Applicant’s executive and administrative office areas (as described in paragraph eight (8) of the facts) are not exempt from state or local sales or use tax under Section 144.054.3.

Section 144.054.3 provides an exemption from state and local sales and use taxes for “all utilities, machinery, and equipment used or consumed directly in television or radio broadcasting.”

Missouri Code of State Regulations 12 CSR 10-10.110.210 defines “broadcaster” as “[a]n entity who transmits (a radio or television signal) over the airwaves for public or general use.” “Broadcasting” encompasses the contents of the signal and the act of transmitting that signal.

Section 144.054.3 provides an exemption for utilities, machinery, and equipment used directly in television or radio broadcasting. Based on the definition of broadcasting, the utilities, machinery, and equipment that are used directly for creating or controlling the contents of the signal or for the transmission of that signal would be eligible for this exemption. Applicant’s utilities, machinery, and equipment used in Applicant’s executive and administrative office areas are not used directly in television broadcasting. They are used for managing and administering television programming. Therefore, the utilities, machinery and equipment used in these offices are not exempt from state or local sales or use tax under Section 144.054.3.

ISSUE 2:

Are the purchases of utilities, machinery and equipment used in Applicant’s traffic department exempt from state and local sales and use tax under Section 144.054.3?

RESPONSE 2:

Yes, the purchases of utilities, machinery, and equipment used in Applicant’s traffic department are exempt from state and local sales and use tax under Section 144.054.3. **See** Response 1.

ISSUE 3:

Are the purchases of utilities, machinery, and equipment used in Applicant’s television studio areas exempt from state and local sales and use tax under Section 144.054.3?

RESPONSE 3:

Yes, the purchases of utilities, machinery, and equipment used in Applicant’s television studio areas are exempt from state and local sales and use tax under Section 144.054.3. **See** Response 1.

ISSUE 4:

Are the purchases of utilities, machinery, and equipment used in Applicant’s production areas exempt from state and local sales and use tax under Section 144.054.3?

RESPONSE 4:

Yes, the purchases of utilities, machinery, and equipment used in Applicant's production areas are exempt from state and local sales and use tax under Section 144.054.3. **See** Response 1.

ISSUE 5:

Are the purchases of utilities, machinery, and equipment used in Applicant's advertising department exempt from state and local sales and use tax under Section 144.054.3?

RESPONSE 5:

Yes, the purchases of utilities, machinery, and equipment used in Applicant's advertising department are exempt from state or local sales or use tax under Section 144.054.3. The utilities, machinery, and equipment eligible for exemption include only those which are used for production or preparation of commercial advertisements for broadcast and do not include utilities, machinery, or equipment used exclusively for production or preparation of commercial advertisements transmitted solely via the Internet. **See** Responses 1 and 6.

ISSUE 6:

Are the purchases of utilities, machinery, and equipment used in Applicant's Internet broadcast department exempt from state and local sales and use tax under Section 144.054.3?

RESPONSE 6:

No, the purchases of utilities, machinery, and equipment used in Applicant's Internet broadcast department are not exempt from state or local sales or use tax under Section 144.054.3. **See** Response 1.

ISSUE 7:

Are the purchases of utilities, machinery, and equipment used in Applicant's technical and engineering areas exempt from state and local sales and use tax under Section 144.054.3?

RESPONSE 7:

Yes, the purchases of utilities, machinery, and equipment used in Applicant's technical and engineering areas are exempt from state and local sales and use tax under Section 144.054.3. The utilities, machinery, and equipment eligible for exemption include only those which are used to engineer content for broadcast and do not include utilities, machinery, or equipment used exclusively to engineer content solely transmitted via the Internet. **See** Responses 1 and 6.

ISSUE 8:

Are the purchases of utilities, machinery, and equipment used in Applicant's graphic arts areas exempt from state and local sales and use tax under Section 144.054.3?

RESPONSE 8:

Yes, the purchases of utilities, machinery, and equipment used in Applicant's graphic arts areas are exempt from state and local sales and use tax under Section 144.054.3. The utilities, machinery, and equipment eligible for exemption include only those which are used for graphic arts to be broadcast and do not include utilities, machinery, or equipment used exclusively for graphic arts solely transmitted via the Internet. **See** Responses 1 and 6.

ISSUE 9:

Are Applicant's purchases and/or leases of motor vehicles and aircraft exempt from state and local sales and use tax under Section 144.054.3?

RESPONSE 9:

No, Applicant's purchases and/or leases of motor vehicles and aircraft are not exempt from state or local sales or use tax under Section 144.054.3. The motor vehicles and aircraft are used to transport reporters and news crews to the news locations and are not used directly in broadcasting the radio and television signals. **See** Response 1.

ISSUE 10:

Are Applicant's purchases and/or leases of audio and video recording equipment exempt from state and local sales and use tax under Section 144.054.3?

RESPONSE 10:

Yes, Applicant's purchases and/or leases of audio and video recording equipment are exempt from state and local sales tax and use tax under Section 144.054.3. The purchases and/or leases of audio and video recording equipment eligible for exemption include only those which are "used or consumed directly in television or radio broadcasting" and do not include purchases and/or leases of audio and video recording equipment used exclusively for content solely transmitted via the Internet. **See** Responses 1 and 6.

ISSUE 11:

Are Applicant's purchases and/or leases of remote transmitting equipment exempt from state and local sales and use tax under Section 144.054.3?

RESPONSE 11:

Yes, Applicant's purchases and/or of remote transmitting equipment are exempt from state and local sales and use tax under Section 144.054.3. The purchases and/or leases of remote transmitting equipment eligible for exemption include only those of remote transmitting equipment which is "used or consumed directly in television or radio broadcasting" and do not include purchases and/or leases of remote transmitting equipment used exclusively for content solely transmitted via the Internet. **See** Responses 1 and 6.

ISSUE 12:

Are the purchases and/or leases of utilities, machinery, and equipment used at Applicant's remote broadcast transmitter site exempt from state and local sales and use tax under Section 144.054.3?

RESPONSE 12:

Yes, the purchases and/or leases of utilities, machinery, and equipment used at Applicant's remote broadcast transmitter site are exempt from state and local sales and use tax under Section 144.054.3. **See** Response 1.

ISSUE 13:

Are Applicant's purchases of cellular phones and cellular phone services exempt from state and local sales and use tax under Section 144.054.3?

RESPONSE 13:

Yes, Applicant's purchases of cellular phones and cellular phone services are exempt from state or local sales or use tax under Section 144.054.3. The purchases of cellular phones and cellular phone services eligible for exemption include only those for cellular phones and cellular services which are "used or consumed directly in television or radio broadcasting" and do not include purchases of cellular phones and cellular phone services used exclusively for content solely transmitted via the Internet or used exclusively for non-broadcast purposes. **See** Responses 1 and 6.

Applicant's request for a letter ruling was for the proper application of Section 144.054, as enacted by Senate Bill 30, effective August 28, 2007. This letter ruling does not address exemption from sales and use tax for broadcast equipment under Section 144.811, RSMo.

This letter ruling is binding upon the Department of Revenue with respect to the Applicant for three (3) years from the date of this letter and is subject only to statutory changes by the General Assembly and to changes in the interpretation of law by the courts or administrative tribunals. If a change occurs, the taxpayer who relies upon an outdated interpretation may be subject to additional taxes, interest and penalties, which may be imposed prospectively from the date of the

change. For this reason, the interpretation set forth above should be reviewed on a regular basis. Please note that any change in or deviation from the facts as presented will render this ruling inapplicable.

Should additional information be needed, please contact Rochelle Reeves, Office of General Counsel, Post Office Box 475, Jefferson City, Missouri 65105-0475 (phone 573-751-4413), or me.

Sincerely,

Julie A. Allen, CPA, PMP”

SUMMARY

The following are **EXEMPT**:

- Purchases of utilities, machinery and equipment used in the traffic department;
- Purchase of utilities, machinery and equipment used in the television studio areas;
- Purchases of utilities, machinery and equipment used in the production areas;
- Purchases of utilities, machinery and equipment used in the advertising department which are used for the production or preparation of commercials for broadcast;
- Purchases of utilities, machinery and equipment used in the technical and engineering areas;
- Purchases of utilities, machinery and equipment used in the graphic arts areas;
- Purchases and leases of audio and video recording equipment;
- Purchases and leases of remote transmitting equipment (trucks, etc.);
- Purchases and leases of utilities, machinery and equipment used at the remote transmitter sites; and,
- Cell phones and cell phone services used directly in broadcasting.

The following are **NOT EXEMPT**: Administrative offices, internet broadcast department, motor vehicles and aircraft (except remote broadcasting trucks).