



DED Chapter 144.054 “Chapter 100” Sales Tax Exemption on the Lease Transaction Between the Municipality and the Company

MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT

PURPOSE

DED provides a state and local sales tax exemption on tangible personal property, which is used directly in the process or production, that is leased by the Company from the City/County.

Most of the benefits derived from the use of Chapter 100 property and sales tax exemptions are derived from processes that occur at the local municipality level. Under Chapter 100 the facility, construction materials and certain tangible personal property may be purchased tax exempt by the City/County and then leased back to the Company. That tax exempt status extends to both state and local sales tax and local property tax. The City or County is using its own tax exempt status to extend to the purchase and ownership of certain real property, construction materials, and tangible personal property in order to provide a lower cost benefit to a business locating or expanding in its community. That benefit may be derived through an exemption of local property taxes and/or state and local sales taxes for an established period of time.

DED's function within the Chapter 100 process is to offer an exemption of the sales tax that would otherwise be applied to the “lease” of specific tangible personal property executed by the Municipality to the Company as part of their Chapter 100 project.

The City/County tax exempt status does not cover state and local sales taxes that apply to the lease of certain tangible personal property back to the Company, which is the typical arrangement under the Chapter 100 process. (The lease of real property is not subject to sales tax.)

The City's/County's authority for the exemption of certain sales taxes and property taxes rests in the purchase and ownership. Section 144.054, RSMo, of the state statute recognizes that additional state and local sales tax application to the tangible personal property leased back to the Company, and provides a further benefit opportunity to exempt the tax only with permission of DED.

AUTHORIZATION

Section 144.054(2), RSMo, as enacted in SB30 (2007)

ELIGIBLE AREAS

Statewide.

ELIGIBLE APPLICANTS/ BENEFICIARIES

Cities and Counties may apply to DED on behalf of Companies for which Chapter 100 bond proceeds are used to purchase

tangible personal property used directly in the process or production, which is then leased back to the Company. Eligible companies include: manufacturing, warehousing, distribution, office, research and development, agricultural processing and services in interstate commerce. Services in interstate commerce are defined with a very narrow definition. Retail and services in intrastate commerce are not eligible.

ELIGIBILITY CRITERIA

Circumstances Under Which DED May Apply the Discretionary Benefit Exemption:

1. DED Proposal: The benefit must be contained in a formal DED proposal and accepted by the Company. Since DED cannot enact the sales tax exemption on the lease without the underlying Municipality Chapter 100 in place, any inclusion in a formal DED proposal will be coordinated with the Municipality and their Economic Developer.
2. But/For: The proposal must be accepted by the Company prior to any project announcements, no approval or issuance of the bonds may have taken place, and the tangible personal property may not have been purchased prior to the acceptance of the proposal.
3. Competitive: The project must be competitive, have comprehensive local incentive participation, have above average wages with benefits or be located in an economically distressed or blighted area, have a positive state fiscal impact and have an indication that the municipality has offered the local Chapter 100 exemptions.

PROGRAM BENEFITS/ELIGIBLE USES

The Missouri Department of Economic Development (DED) must approve a state or local sales tax exemption to a company for which Chapter 100 bonds will be issued prior to the date the personal property is placed in service. The company may purchase eligible personal property for resale, as title will be transferred to the local government. The company will be responsible for the payment of sales tax on purchases exceeding the maximum accepted in the proposal, ineligible purchases, or the revenue stream generated by lease of ineligible personal property.

APPLICATION/APPROVAL PROCEDURE

Typical Steps in the Process of Receiving a DED Sales Tax Exemption Certificate for Sales Taxes Applied to the Lease of Certain Tangible Personal Property Leased By a Municipality to a Company under a “Chapter 100” Project:



APPLICATION/APPROVAL PROCEDURE (CONT)

1. The Municipality or their Economic Development Representative coordinates the incentive package to be proposed for a Company intending to expand or locate in the community and create new jobs directly with a DED Regional Business Development Specialist or Missouri Partnership Business Recruiter.
2. The DED Regional Business Development Specialist or Missouri Partnership prepares an incentive proposal request containing the estimated benefit amount of the sales tax exemption on the lease of certain tangible personal property subject to the completion of the underlying Chapter 100 approvals at the local level.
3. The Company accepts the DED proposal.
4. The City/County passes an Inducement Resolution.
5. The City/County AND Company submit the DED Chapter 100 Application with the following relevant attachments:
 - a. *Company must submit a list of proposed purchases of tangible personal property;*
 - b. *City/County must submit a copy of the Inducement Resolution*
6. DED reviews the Application and determines approval.
7. DED shares the list of proposed purchased with the Department of Revenue for review of eligibility under the program.
8. DED issues a conditional approval letter to the Company and the City/County with the Department of Revenue comments attached (letter will also request tax clearance letter from Company).
9. The City executes the Chapter 100 bonds.
10. The Company purchases the property with the City/County exemption for resale on a tax exempt basis.
11. The real and personal property is transferred to the City/County.
12. The City/County executes a lease agreement with the Company for the property.

13. DED issues a Tax Exemption Certificate for the sales tax related to the lease.
14. Tangible Personal Property Not Considered Eligible for an Exemption of Sales Tax on the Lease : The following list is not exhaustive but includes known items to avoid when presenting an equipment or tangible personal property list to DED with the DED Chapter 100 Application:
 - Day care equipment
 - Weight room equipment
 - Break room equipment
 - Artwork

CONTACT

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