

March 17, 1970

OPINION LETTER NO. 164  
(Answered by letter-Nowotny)

Honorable William C. Phelps  
State Representative  
4th District  
5016 Grand  
Kansas City, Missouri 64112



Dear Mr. Phelps:

This is in reply to your request for an official opinion of this office, which request reads as follows:

"During the regular session of the 75th General Assembly of the State of Missouri, there was enacted House Bill No. 537 which repealed section 144.080, RSMo. Supp. 1967 and section 144.655, RSMo.1959, relating to the sales tax and use tax and in lieu thereof, provided two new sections to be effective January 1, 1970.

"Section 144.080, RSMo. Supp. 1967, which related to the collection of sales tax and requires the seller by the thirtieth day of the month following each calendar quarterly period to make return of and remit his sales tax liability to the director of revenue, was expanded to provide:

"1. Where his aggregate sales tax liability exceeds \$250 for either the first or second month of a calendar quarter, the seller must pay his aggregate sales tax liability for each such month by the fifteenth day of the succeeding month; and that such monthly payments be allowed as a credit against the seller's aggregate tax liability shown on his quarterly return (Section 144.080-2, RSMo. Supp. 1969);

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"2. Where his aggregate sales tax liability is less than \$45 for a calendar quarter, the seller shall be permitted to file a calendar year return and pay his aggregate annual sales tax liability by January 31st of the succeeding year (Section 144.080-3, RSMo. Supp. 1969).

"Similar use tax revisions were added to Section 144.655, RSMo. 1959 requiring monthly payment of use tax liability when exceeding \$250 for either the first or second months of the calendar quarter period and permitting these monthly payments as a credit against the vendor's aggregate use tax liability shown on his quarterly return by the fifteenth day of the month following the calendar quarter period (Section 144.655-2, RSMo. Supp. 1969). Also, where his aggregate use tax liability is less than \$45 a calendar quarter, it was provided that the vendor shall be permitted to file a calendar year return and pay his aggregate annual use tax liability by January 31st of the succeeding year (Section 144.655-3, RSMo. Supp. 1969).

"Instead of prescribing a form of tax deposit for making monthly sales or use tax payments required by House Bill No. 537, which would be allowed as a credit against the aggregate tax liability reportable for the calendar quarter period, the acting Director of Revenue has advised payors of substantial sales and use tax that their tax accounts have been placed on a monthly remittance and reporting basis which basis requires monthly returns with tax remittance to be filed by the fifteenth day of the following month. To require these monthly returns, the Director in his attached notification cites the authority provided him by Section 144.090, RSMo. Supp. 1963, but ignores subsection 2 thereof which provides where monthly tax payments are required by him that ' . . . such (sales tax) payments shall be made on or before the thirtieth day of each month following the period in which the tax is required to be collected.'; the same power to require monthly returns and remittance of the use tax is provided the Director by Section 144.660, RSMo. 1959.

"Since House Bill No. 537 did not abolish calendar quarter reporting of sales and use tax liability, may the Director of Revenue use the authority of Section 144.090, RSMo. Supp. 1963 to require monthly returns of sales-use tax liability with

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monthly payments at any time other than the thirtieth day of each month following the period in which the tax is required to be collected?

"The opinion of your office on this procedural matter will be appreciated."

Section 144.080, V.A.M.S., as currently amended, applies to the Missouri Sales Tax and reads in part as follows:

"1. Every person receiving any payment or consideration upon the sale of property or rendering of service, subject to the tax imposed by the provisions of sections 144.010 to 144.510, is exercising the taxable privilege of selling the property or rendering the service at retail and is subject to the tax levied in section 144.020. He shall be responsible not only for the collection of the amount of the tax imposed on the sale or service to the extent possible under the provisions of section 144.285, but shall, on or before the thirtieth day of the month following each calendar quarterly period of three months, make a return to the director of revenue showing his gross receipts and the amount of tax levied in section 144.020 for the preceding quarter, and shall remit to the director of revenue, with the return, the taxes levied in section 144.020.

"2. Where the aggregate amount levied and imposed upon a seller by section 144.020 is in excess of two hundred and fifty dollars for either the first or second month of a calendar quarter, the seller shall pay such aggregate amount for such months to the director of revenue by the fifteenth day of the succeeding month. The amount so paid shall be allowed as a credit against the liability shown on the seller's quarterly return required by this section.

"3. Where the aggregate amount levied and imposed upon a seller by section 144.020 is less than forty-five dollars in a calendar quarter, the director of revenue shall by regulation permit the seller to file a return for a calendar year. The return shall be filed and the taxes paid on or before January thirty-first of the succeeding year."

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Section 144.655, V.A.M.S., as currently amended, applies to the Missouri Use Tax and reads in part as follows:

"1. Every vendor, on or before the fifteenth day of the month following each calendar quarter, shall file with the director of revenue a return of all taxes collected for the preceding quarter in the form prescribed by the director of revenue, showing the total sales price of the tangible personal property sold by the vendor, the storage, use or consumption of which is subject to the tax levied by this law, and other information the director of revenue deems necessary. The return shall be accompanied by a remittance of the amount of the tax required to be collected by the vendor during the period covered by the return. Returns shall be signed by the vendor or his authorized agent.

"2. Where the aggregate amount of tax required to be collected by a vendor is in excess of two hundred and fifty dollars for either the first or second month of a calendar quarter, the vendor shall pay such aggregate amount for such months to the director of revenue by the fifteenth day of the succeeding month. The amount so paid shall be allowed as a credit against the liability shown on the vendor's quarterly return required by this section.

"3. Where the aggregate amount of tax required to be collected by a vendor is less than forty-five dollars in a calendar quarter, the director of revenue shall by regulation permit the vendor to file a return for a calendar year. The return shall be filed and the taxes paid on or before January thirty-first of the succeeding year."

Thus, the general statutory scheme is that sales and use tax reports and returns shall be made on a calendar quarterly basis, to be filed on or before the fifteenth day of the month following each calendar quarter. However, depending on certain amounts, return must be made prior to the end of the quarterly period, or can be made on a calendar year basis.

Section 144.090, RSMo Supp. 1967, authorizes the Director of Revenue to require returns other than on a quarterly basis as follows:

"1. The director of revenue, if deemed necessary in order to insure payment to or facilitate the collection by the state of the amount of taxes, or if the revenue needs of the state demand it, may require returns and payment of the amount of

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taxes for monthly or annual periods instead of calendar quarters.

"2. In all cases where monthly or annual payments are required by the director of revenue, such payments shall be made on or before the thirtieth day of each month following the period in which the tax is required to be collected."

It is our opinion that the amendments to Section 144.080 and Section 144.655 do not alter or restrict the authority granted under Section 144.090.

Therefore, the Director of Revenue can require monthly or yearly returns for sales and use taxes under the provisions of Section 144.090. When the Director so requires monthly or yearly returns pursuant to this section the taxpayer has until the thirtieth day of each month following the monthly or annual period to remit payments.

When the Director of Revenue has not invoked the provisions of Section 144.090, then the provisions of Section 144.080 and Section 144.655 shall apply.

Very truly yours,

JOHN C. DANFORTH  
Attorney General