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## STATE TAX COMMISSION OF MISSOURI ASSESSOR MANUAL

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## 2.0 HISTORY OF REASSESSMENT

The 1945 Constitution of Missouri requires that all real and tangible personal property be assessed at its value or a percentage of the value fixed by law. The courts have interpreted "value" to be synonymous with market value or true value in money. However, prior to 1979, this constitutional requirement was largely ignored, and assessments throughout the state lacked uniformity.

In 1979, the Missouri Supreme Court issued *Cassilly v. Riney*, 576 S.W.2d 325 (Mo. banc 1979) which held that the system of assessment in St. Louis County violated the uniformity provisions of the state constitution. The Supreme Court further stated that the State Tax Commission had the responsibility to resolve the assessment inequities in that county, and throughout the state, and possessed administrative powers commensurate with that task. Additionally, the case overruled a long line of Missouri cases which held that the State Tax Commission had no authority over intra-county equalization of assessments, but could only exert authority to equalize assessments on an aggregate basis between counties.

The State Tax Commission responded to the decision in *Cassilly* by ordering St. Louis County to submit a plan by July 2, 1979, for general revaluation of the county. The Commission also directed all other counties to supply a general plan for reassessment or a request for a hearing. Subsequently, all hearings for counties other than St. Louis County were completed and all counties in the state filed an approved plan for the equalization of real property assessment within their jurisdictions. The state legislature appropriated funds to partially reimburse counties for most costs associated with reassessment. The statewide reassessment program was completed and implemented in 1985. In 1987, a two-year assessment cycle commenced with property assessments being updated every odd-numbered year.

Assessors are now required, by Section 137.115.1 RSMo, to prepare and submit a two year assessment plan on or before January 1 of each even-numbered year. Such plan must be approved by the county commission and the State Tax Commission. Section 137.750 RSMo, authorizes the state to reimburse update to sixty percent (60%) of the costs of reassessment provided that the county is in compliance with its assessment and equalization maintenance plan.



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## 2.1 TAX DAY

Section 137.075 RSMo, states:

*Every person owning or holding real property or tangible personal property on the first day of January, including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year.*

With only a few minor exceptions, valuation date, ownership, situs, and taxability are all determined on January 1 of the tax year. *Missouri has no statutory provision for prorating taxes* (other than the limited instance of the Occupancy Law, Section 137.082 RSMo, discussed below). Therefore, if a taxpayer owns a car on January 1 and sells it or moves out of the state on, say, January 2, he or she is liable for the taxes on that car for the entire year. Conversely, if a taxpayer buys a car on January 2 or moves into the state with the car on January 2 or later in the year, no taxes are owed on the car for that tax year.

Real estate is slightly different in that the debt for taxes runs with the land and not with the individual owner. See Sections 137.170, 140.500, and 141.240 RSMo. Consequently, if Smith owns real property on January 1 and sells it to Jones in March, Smith may be unconcerned whether the taxes are paid. If the taxes are not paid, the remedy is to sell the land for taxes, not obtain a judgment against Smith who owned the property on January 1. Obviously, almost all real estate closings provide for prorating the taxes between the parties to resolve any unfairness, but this is a private agreement between the parties and is wholly outside the assessment-taxation process.

Exceptions to the general rule that conditions on January 1 determine valuation date, ownership, situs, and taxability are:

1. The two-year cycle set out in Section 137.115 RSMo, for real estate, and Commission rules provide that in the even-numbered year the valuation is based upon economic conditions on January 1 of the immediately preceding odd-numbered year.
2. Missouri Courts have held that personal property does not have to be physically located in the jurisdiction on January 1 to be taxable, only that it must be more or less permanently located in the



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taxing jurisdiction. Sections 137.090, 137.095 RSMo, and *Buchanan County v. State Tax Commission*, 407 S.W.2d 910 (Mo. 1966).

3. If a political subdivision acquires property at any time during the tax year, it is immune from taxation for that year and all future years in which it retains ownership. *State ex rel. City of St. Louis v. Bauman*, 153 S.W.2d 31 (Mo. 1941). However, if an organization whose use of the property makes it exempt, such as a private school, church or charity, acquires otherwise taxable property after January 1, the property remains taxable for that entire year, but may be exempted thereafter if its use warrants it.

4. In counties which adopt provisions of the Occupancy Law embodied in Section 137.082 RSMo, newly constructed and occupied residential real property can be assessed and taxed beginning on the first day of the month following occupancy for the proportionate part of the remaining year. Further, newly constructed residential property which has never been occupied is to be assessed as unimproved until such occupancy or the first day of January of the fourth year following the year in which construction of the improvements was completed. This statute also allows the pro rata removal from the tax rolls of any residential improvement destroyed by a natural disaster including a tornado, fire, flood, or earthquake. It is important to remember that these provisions apply only in counties adopting the Occupancy Law.

## 2.2 CLASSIFICATION OF PROPERTY

### 1. Classes

Ad valorem property tax assessments focus on two classes of property--real and tangible personal property. Art. X, Section 4, Mo. Const. and Section 137.015 RSMo.

#### A. Real Property

##### (1) Definitions

Real property includes the land and all growing crops, buildings, structures, improvements, and fixtures of whatever kind. Section 137.010 RSMo.



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Real property also includes the installed poles used in the transmission or reception of electrical energy, audio signals, video signals, or similar purposes, provided the owner of the poles is also the fee simple owner, possessor of an easement, holder of a license or franchise, or is the beneficiary of a right-of-way dedicated for public utility purposes for the underlying land. The attached wires, transformers, amplifiers, substations, and other such devices and appurtenances used in the transmission or reception of electrical energy, audio signals, video signals, or similar purposes when owned by the owner of the installed poles is real property. If not owned by the owner of the installed poles, these items are considered personal property.

Additionally, real property includes the stationary property used for transportation of liquid and gaseous products including petroleum products, natural gas, water, and sewage.

#### **(2) Subclasses**

Real property is subclassified as 1) residential, 2) agricultural and horticultural, and 3) utility, industrial, commercial, railroad, and other property. Subclass definitions are fairly straight forward and are found in Section 137.016 RSMo.

Residential real property is assessed at 19% of its market value. Section 137.115.5 RSMo. It is important to remember that in addition to typical homes, condominiums and apartments, vacant land in connection with a golf course, manufactured home parks, and land used as a golf course are also subclassified as residential. Bed and breakfast are classified as residential if the owner resides in the B&B, it is the owner's primary residence, and the B&B has 6 or fewer rooms for rent. Hotels and motels subject to state sales tax pursuant to Section 144.020.1(6) RSMo, are not residential, but commercial.

Agricultural and horticultural property which is actively used for such a purpose is assessed at 12% of its agricultural production value. Section 137.021 RSMo, and State Tax Commission rule 12 CSR 30-4.010. Vacant and unused agricultural land is assessed at 12% of its market value. Sections 137.017.4 and 137.016.3 RSMo. Agricultural or horticultural buildings are assessed at 12% of their market value.



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Utility, industrial, commercial, railroad, and other real property, generally referred to as “commercial property” is assessed at 32% of its market value. Section 137.115.5 RSMo. This category is a catchall for property that does not fit in either of the other two classes and specifically includes property used directly or indirectly for commercial, mining, industrial, manufacturing, trade, professional, business, or a similar purpose. Real property centrally assessed pursuant to Section 138.420 RSMo, is included in this category.

### **B. Personal Property**

Personal property is assessed as follows:

Tools and equipment used for pollution control and tools  
and equipment used in retooling for the purpose of  
introducing new product lines or used for making  
improvements to existing products by any company  
which is located in a state enterprise zone. 25%

Manufactured Homes (used as residences) 19%

Farm Machinery and Livestock 12%

Historic Cars and Planes\* 5%

Grain 0.5%

Motor Vehicles and all other personal property 33 1/3%

- Motor vehicles which are eligible for registration as and are registered as historic motor vehicles pursuant to section 301.131 and aircraft which are at least twenty-five years old and which are used solely for noncommercial purposes and are operated less than two hundred (200) hours per year or aircraft that are home built from a kit (Section 137.115.3(4)).

### **C. Problem Areas in Classifying Property**

#### **(1) Fixtures**

Under Missouri case law, what would otherwise be personal property can be changed to real property, i.e., a fixture, under certain circumstances. The court decisions have been somewhat unpredictable in this area, but the basic test for determining whether or not something is a fixture has



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been fairly consistent. In *Cuivre River Electric v. State Tax Commission*, 769 S.W.2d 431 (Mo. 1989), the Missouri Supreme Court held that the elements to be studied are: 1. Whether the property has been annexed to the real property; 2. Whether the property has been adapted to fit its location; and 3. Whether the intent of the owner, as evidenced by acts and conduct, is that the property should remain permanently.

If these three elements are satisfied, the property in question should be assessed as real rather than personal property.

#### (2) **Split Use**

It is common for a single property to have a split use. For instance, a farm very often has a portion of it, usually up to five acres, classified as residential. In urban areas, buildings are often subject to split use. The classic example is a building with a store on the first floor and residence on the second.

The Commission has held that greenhouses where plants are actually being grown should be classified as agricultural, but the area where the plants or flowers are sold should be commercial. Similarly, day care areas or offices in the home may be broken out as commercial if the assessor believes they constitute substantial uses.

In some circumstances, it is difficult to determine the percentage to be allotted to each class and the assessor must apply his or her best judgment.

#### (3) **Forest Land**

The distinction between active agricultural use and vacant and unused agricultural land, and the resulting assessment differential, has created problems for assessors. The problem is accentuated when a taxpayer claims that the active use is raising timber. While the Commission has ruled that timber is a crop, it is such a slow-growing crop it is often difficult to determine if the owner is actively attempting to produce timber.

The Commission recommends the assessor first determine if there is a predominant agricultural use or if the land is vacant, unused or held for future use. On forested land, an active agricultural use



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exists only if the acreage is a part of a larger, active farming operation or if there is evidence of a history of periodic timber harvests, a systematic plan for timber stand improvement, and/or substantial income derived from forest products.

If the assessor determines the predominate use is agricultural, the land should be assessed at 12% of its *productive value* pursuant to 12 CSR 30-4.010(2)(A).

If the assessor determines the land is vacant, unused, or held for future use, he or she should analyze the property pursuant to the eight factors in Section 137.016 RSMo, for determining its immediate most suitable economic use and classify it accordingly. (If the land's immediate most suitable use is agricultural, it should be assessed at 12% of its *market value* pursuant to Section 137.017 RSMo.)

#### (4) **Mining Property**

Section 137.115.17 RSMo, (2016) provides that any portion of real property that is available as reserve for strip, surface, or coal mining, that has not been bonded and permitted, shall be assessed based upon how the real property is being used.

### 2.3 PERSONAL PROPERTY

#### 1. **Personal Property Lists and Penalties**

##### A. **All Counties Except City of St. Louis**

The following discussion applies to all counties except City of St. Louis, and is derived from Sections 137.280, 137.340, and 137.345 RSMo.

Taxpayers' personal property lists, except those of merchants and manufacturers and those reporting local property of state-assessed companies (which are due April 1), shall be delivered to the assessor between January 1 and March 1 each year. The assessor may, upon request of a taxpayer, send any assessment list or notice to the taxpayer in electronic form. These lists must be signed and certified by the taxpayer as being a true and complete list of all taxable tangible personal property owned or



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held by the taxpayer. In first class counties, taxpayers are to provide an estimate of the true value of the listed property.

Between March 1 and April 1, the assessor shall send a second notice to taxpayers who were originally sent a form but whose lists were not returned by March 1. If the lists are not then returned by May 1, the following penalties shall apply:

For lists due prior to tax year 2018:

<b>Assessed Valuation</b>	<b>Penalty</b>
0-\$1,000	\$10
\$1,001-\$2,000	\$20
\$2,001-\$3,000	\$30
\$3,001-\$4,000	\$40
\$4,001-\$5,000	\$50
\$5,001-\$6,000	\$60
\$6,001-\$7,000	\$70
\$7,001-\$8,000	\$80
\$8,001-\$9,000	\$90
\$9,001 and above	\$100

For lists due tax year 2018 and thereafter:

<b>Assessed Valuation</b>	<b>Penalty</b>
0-\$1,000	\$15
\$1,001-\$2,000	\$25
\$2,001-\$3,000	\$35
\$3,001-\$4,000	\$45
\$4,001-\$5,000	\$55
\$5,001-\$6,000	\$65
\$6,001-\$7,000	\$75
\$7,001-\$8,000	\$85
\$8,001-\$9,000	\$95
\$9,001 and above	\$105

In Clay County, the assessor shall omit the penalty where he/she is satisfied the neglect was





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unavoidable and not willful or falls into one of the categories below. In all other political subdivisions (except City of St. Louis) the penalty shall be omitted if the assessor is satisfied the neglect falls into one of the following categories:

1. The taxpayer is in military service and is outside the state;
2. The taxpayer filed timely, but in the wrong county;
3. There was a loss of records due to fire, theft, fraud, or flood;
4. The taxpayer can show the list was mailed timely as evidenced by the date of postmark;
5. The assessor determines that no form for listing personal property was mailed to the taxpayer for that tax year;
6. The neglect occurred as a direct result of the actions or inactions of the county or its employees or contractors.

If a taxpayer provides the assessor with a fraudulent list with the intent to defraud, the assessor is to give written notice of the fraudulent list to the board of equalization. The board must give notice to the taxpayer of the particulars of the allegations of falsification and notice of a hearing date. If the board finds the list to be fraudulent, it is to ascertain the value of *all* the taxpayer's property and, by way of penalty, double the amount of taxes. Section 137.285 RSMo.

#### **B. City of St. Louis**

By April 1, the taxpayers must file with the assessor a list of tangible personal property owned or controlled by them on January 1 of the tax year. Such a list must estimate the true value of the listed property. If any taxpayer fails to file a return, the assessor is to ascertain the value of the unreported property based upon the best information available and assess the property at 10% above its value. Sections 137.495 and 137.505 RSMo.

If the board of equalization, after notice and hearing, determines that a taxpayer is guilty of knowingly filing a false return, the board shall double the assessment of the taxpayer's property. Section 137.540 RSMo. Such a taxpayer may also be subject to fine and/or imprisonment if a court decides the taxpayer made a false or fraudulent return with the intent to defeat or evade the assessment. Section 137.545 RSMo.



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## **2. Where To Tax Personal Property**

### **A. Introduction**

Every owner or holder of tangible personal property on January 1, including property purchased on that day, is liable for the taxes on that property for that calendar year. Section 137.075 RSMo. If a Missouri resident owns property permanently located outside the state, Missouri political subdivisions have no right to tax it. The nature of the owner determines where taxable property within Missouri should be taxed, and owners generally fall into the following categories:

### **B. Natural persons**

Taxpayers who are not corporations, partnerships, or some other legal entity, are referred to as natural persons. Section 137.090 RSMo, states that the personal property shall be taxed in the *county where the taxpayers reside*. However, the following property is taxed *where the property is located*:

1. Houseboats,
2. Cabin Cruisers,
3. Floating boat docks,
4. Manufactured homes used for lodging.

Further, tangible personal property of estates is to be taxed in the county in which the probate division of the circuit court has jurisdiction.

Personal property, other than motor vehicles as defined in Section 301.010 RSMo, used exclusively in connection with farm operations of the owner and kept on the farmland, should not be assessed by a city, town, or village unless the farmland is totally within the boundaries of such a taxing entity.

### **C. Corporations or Partnerships**

According to Section 137.095 RSMo, corporate property is to be assessed in the county in which it is situated on January 1. The property does not have to actually be in the county on January 1 so long as it has a more or less permanent location in the county.



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Motor vehicles owned by corporations are to be taxed in the county in which the motor vehicles are “based.” Based is defined as the place where the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled.

Leased passenger vehicles are to be assessed at the residence of the driver or, if that residence is unknown, at the location of the lessee.

#### **D. Non-Missouri Residents**

Tangible personal property belonging to residents of foreign countries or states other than Missouri should be taxed *where it is located*. In *Brown v. Raines*, STC Appeal Number 05-7302 (2006), the full Commission found that a cabin cruiser owned by a resident of Kansas, but kept in Morgan County, had a sufficient nexus or contact with Missouri to be taxable in Morgan County. The case may be reviewed at the State Tax Commission’s website: <https://stc.mo.gov/apps/stc/legal-decisions/>.

#### **E. Military Personnel**

The assessment of the non-business personal property of military personnel still appears to be an area of confusion, judging from the number of calls we receive on this subject. The subject is further complicated by questions regarding the *Service Members Civil Relief Act 50 USC App. 571*. The United States Supreme Court has stated that service (people) shall not lose their residence or domicile at their home state solely by reason of being absent therefrom in compliance with military or naval orders, and that it does not relieve service (people) stationed away from home from all taxes of their state of domicile, but is to also relieve them of the burden of supporting multiple governments.

The effect of the Act is to treat military personnel as though they have never left their home state and



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county. Consequently, assessors must treat the tangible personal property of Missouri personnel stationed in other states or countries the same as if the taxpayer (and his/her property) were still present in the county. Conversely, the non-business personal property of any military personnel residing in a Missouri county under military orders is not taxable in Missouri.

The Attorney General issued an opinion (*Burrell*, Op. Att’y. Gen. No 95 [Feb 16, 1966]) concluding that non-resident military personnel stationed in Missouri may obtain a certificate of no tax due (often called a waiver) from the collector and license their cars in Missouri without paying property tax on them. Verification of a serviceperson’s state of legal residence or SLR is easily ascertainable by looking at the bottom portion of their “Leave and Earnings Statement” (i.e., pay stub), which indicates the individuals claimed SLR.

If the vehicle is registered jointly with a spouse, the vehicle may not be taxed in Missouri. The *Military Spouses Residency Relief Act*, the act provides, among other things, that the military spouse shall neither lose nor acquire a residency for tax purposes by reason of being absent or present in any taxing jurisdiction solely to be with the service member in compliance with military orders if the residence is the same for the service member & spouse.

#### **F. Summary**

TYPE OF OWNER	LOCATION OF PROPERTY	WHERE THE PROPERTY IS TAXED	LEGAL AUTHORITY
Natural Person Who Is Missouri Resident	In Missouri	County of Residence Except Items Specified in 137.090 RSMo	137.075 and 137.090 RSMo
Natural Person Who Is Missouri Resident	Outside Missouri	Not Taxable in Missouri	Case Law
Natural Person Who Is <u>NOT</u> Missouri Resident	In Missouri	County Where Property Is Located	Case Law
Corporation	In Missouri	County Where Property Is Located	137.095 RSMo
Military Person (and Spouse) Who Is <u>NOT</u> Missouri Resident	In Missouri	Nontaxable in Missouri--Except Business Personal Property	Federal Law 50 USC 571
Military Person (and Spouse)	In or Outside	In Missouri County Where They Entered	<b>Federal Law</b>



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Who Is Missouri Resident	Missouri	The Service	<b>50 USC 571</b> The federal Servicemembers Civil Relief Act (formerly Soldiers and Sailors Relief Act of 1940)
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### 3. TAXATION OF INSTRUMENTALITIES OF INTERSTATE COMMERCE

#### A. TAXABILITY

Article I, Section 8 of the United States Constitution gives the power to regulate commerce among the various states to the United States Congress. The federal courts, after much litigation, have held that states may tax instrumentalities of interstate commerce if the tax does not violate the commerce clause, equal protection or due process. The test developed is that (1) the property must have a substantial nexus (contact or relationship) with the taxing jurisdiction, (2) the tax must be fairly apportioned, (3) it must not discriminate against interstate commerce, and (4) it must be fairly related to the services rendered by the state.

#### B. TRUCKS INVOLVED IN INTERSTATE COMMERCE

##### (1) Assessment Procedure

##### (a) Identifying Trucks Engaged in Interstate Commerce

Trucks owned by an individual are to be taxed in the county where the owner resides. Section 137.090 RSMo. Trucks owned by a corporation and subject to the Missouri Motor Carrier Act (Chapter 390) are to be taxed where they are based. Section 137.095 RSMo. “Based” means the place where the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled. See also Section 2.3.2 of this manual entitled “Where to Tax Personal Property.”

Even though January 1 is the assessment date, the courts have held that trucks having sufficient



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contacts to establish a taxable situs may be taxed even if they do not have an actual presence in the jurisdiction on January 1. *Buchanan v. State Tax Commission*, 407 S.W.2d 910, 914 (Mo. 1966) and *Beelman Truck Company v. Ste. Genevieve County Board of Equalization*, 861 S.W.2d 557, 558 (Mo. banc 1993).

Assessors are provided with mileage figures by the Motor Carriers Service (Telephone 573-751-7100). As a practical matter, when the mileage figures are provided on Motor Carriers' list, it is easier for the assessor to apply the apportionment formula than to require each owner/user to provide mileage figures. However, if the figures are either unavailable or are inaccurate for a particular vehicle, the burden is on the taxpayer to provide accurate mileage information and proof that the truck has acquired a taxable situs in another state. Often such evidence is also required on trailers which are not paired with trucks and trucks weighing less than 26,000 pounds. Trailers and lighter trucks are not reported by Motor Carriers but often have authority to engage in interstate commerce. Another instance in which trucks are not reported by Motor Carrier Services is when those trucks register in another state but maintain a base in Missouri. This was the situation in the *Beelman* case, cited above. In such cases, the owner or user of the truck should report the percentage of Missouri miles for apportionment purposes. If he or she refuses to do so, the full value of the trucks should be attributed to Missouri until the information is forthcoming.

Many trucks are held and used by lessees. Missouri law provides that taxes may be assessed against the owner or holder of property. Section 137.075 RSMo. The assessor has the option of assessing the lessee or the owner. The burden is again upon the taxpayer to notify the assessor if the property should be assessed in the owner's name. A personal judgment can be obtained against the party assessed and any of that person's property can be attached to satisfy the tax lien. Sections 140.730 through 140.750 RSMo.

If a truck could be taxed by two counties, either because of an owner-lessee arrangement or because a company has two or more bases in Missouri, the assessors must determine among themselves which county has the predominant control or contact with the truck or trucks.

#### (2) Assessment and Apportionment

In 1983, the Commission issued an order to all assessors to apportion interstate truck assessments.



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The order remains in effect and was upheld by the Missouri Supreme Court in *Beelman Truck Company v. Ste. Genevieve County Board of Equalization*, 861 S.W.2d 557, 560 (Mo banc 1993). Further, Section 137.090 RSMo, (2013) provides that tractors and trailers shall be apportioned to Missouri based on the ratio of miles traveled in this state to miles traveled in the United States during the preceding tax year or on the basis of the most recent annual mileage figures.

The order's and statute's apportionment formula is as follows:

Individual Trucks: True value of the truck x the percent of miles attributable to Missouri x 33 1/3%.

Truck Fleets: True value of all trucks x the percent of Missouri miles of all trucks x 33 1/3%.

### (3) **Boats and Barges**

Prior to 1995, the Commission recommended that if a boat or barge has a taxable situs in the county, the assessor should assess it and, if the boat or barge is engaged in interstate commerce, should apportion the value based upon miles similar to trucks. However, in 1995, the Supreme Court of Missouri issued *State ex rel. Leggett v. Sovran Leasing Corp*, 909 S.W.2d 664 (S. Ct. 1995). The court based its decision upon Section 154.010 RSMo, which was enacted in its current form in 1879. Subsection 154.010.1 RSMo, makes steamboats and other boats and vessels a special class of property. Subsection 154.010.2 RSMo, reads as follows:

All taxes on such property shall be assessed and collected in the county or city in which the owner or owners of said property may reside at the time of assessment.

The court held that a jurisdiction could only tax the steamboats and other boats and vessels if the owners resided within that county or city. The court stated “. . . the legislature might now impose a properly apportioned tax upon such transitory interstate maritime property, it simply has not done so.”

Thus, steamboats, barges, and other boats and vessels can only be assessed in the county or city in which the owner or owners reside. No statute exists which allows the taxation of non-resident owners of such property.



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#### (4) **Aircraft**

Commercial aircraft operated in this state in air commerce which are owned by airline companies are state-assessed by the State Tax Commission. Small aircraft are assessed by the local assessor similar to other personal property. However, a special procedure exists for assessing aircraft not owned by

airline companies which when fully equipped for flight have a maximum certified gross take-off weight of over three thousand pounds.

The procedure for assessing these planes and appealing such assessments, set out in Section 155.040 RSMo, is as follows:

- A.** The owner or holder of such aircraft must notify the assessor of the claim of “commercial aircraft” upon the return of the personal property list to the assessor. Otherwise, the aircraft is assessed without apportionment, similar to other locally assessed personal property.
- B.** By May 1, the assessor shall provide the State Tax Commission with any information compiled from personal property lists necessary for the Commission to assess the aircraft. Upon request, the taxpayer is to provide any additional information needed by the Commission.
- C.** The Commission shall allocate to Missouri the portion of the total valuation of the aircraft based upon the ratio which the miles flown by the commercial aircraft within Missouri bears to the total miles flown by the aircraft during the immediately preceding calendar year.
- D.** The Commission shall certify all values of such commercial aircraft to the taxpayer and the clerks of the respective counties. Pursuant to 12 CSR 30-2.021, the Commission is prohibited from certifying the apportioned value of aircraft after September first of the tax year.
- E.** The owners of such aircraft may appeal directly to the Commission by August 15 without first appealing to the local board of equalization.

#### (5) **Business Personal Property**





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#### **a. Procedure for Assessing Business Personal Property**

In 2005, 137.122 RSMo, was enacted into law to provide for uniform assessment of business personal property beginning in 2007 for property put into service after January 1, 2006. "Business personal property" is defined by subsection 137.122.1(1) RSMo, as:

[T]angible personal property which is used in a trade or business or used for production of income and which has a determinable life of longer than one year except that supplies used by a business shall also be considered business personal property, but shall not include livestock, farm machinery, grain and other agricultural crops in an unmanufactured condition, property subject to the motor vehicle registration provisions of chapter 301 RSMo, property assessed under Section 137.078, the property of rural electric cooperatives under chapter 394 RSMo, or property assessed by the state tax commission under chapters 151, 153, and 155 RSMo, Section 137.022, and Sections 137.1000 to 137.1030

To establish the assessment under that Section, the following process must be followed:

1. The original cost paid by the current owner, less freight, installation, and sales or use taxes and date of purchase is reported by the owner. Assessors may access sample forms at <http://www.moassessorsassn.org/> in the "Assessor Use Only" Section.
2. The Class Life and Recovery period is determined by using *IRS Publication 946, Appendix B, Table B-1 & B-2 – Table of Class Lives and Recovery Periods* (see cite to IRS internet source below).
3. The assessor applies the proper depreciation schedule found in Section 137.122.3 RSMo, by applying the years since acquisition and the appropriate recovery period to determine the appraised value.
4. The appraised value is multiplied by the statutory assessment level for personal property, 33 1/3% to establish the assessed value.

**Example:** To determine the 2007 value of a special mold used for manufacturing motor vehicles, bought in February 2006 for \$100,000 the process would be as follows:

1. The cost and acquisition date is reported by the owner.
2. A recovery period of 3 years is determined (Asset Class 37.2) by using Publication 946.
3. Because the statute instructs that "the percentage shown for the first year shall be the percentage of the original cost used for January first of the year following the year of acquisition," a depreciation factor of 75% is used. In other words, by using the table in Section 137.122.3 RSMo, and applying a Recovery Period 3 and using Year 1, 75% is indicated. Then multiply 75% by the cost, \$100,000, for an appraised value of \$75,000.



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4. Multiply \$75,000 by 33 1/3% (the assessment level) to determine an assessed value of \$25,000.

### **B. Determining Recovery Periods Under Section 137.122 RSMo**

To assess business personal property (BPP) pursuant to Section 137.122 RSMo, an assessing officer must determine the recovery period for each item. The Class Lives and Recovery Periods found in *IRS Publication 946, Appendix B, Table B-1 & B-2 – Table of Class Lives and Recovery Periods* provide the information necessary to establish these recovery periods. They are identified as GDS (MACRS) in *Publication 946*, where a detailed description of each of the asset classes can be found. To determine exactly how BPP should be depreciated, it is necessary to read the exact description from *Publication 946, Appendix B*. An Adobe-Acrobat Reader is required to view, download, or print the publication. To access *Publication 946*, go to <https://www.irs.gov/pub/irs-pdf/p946.pdf>.

The State Tax Commission, utilizing *IRS Publication 946*, provides a quick reference in two formats below:

1. List of BPP Groups by Recovery Period –The recovery periods established by Section 137.122 RSMo, are 3, 5, 7, 10, 15, and 20 years. Accordingly, the first listing covers various groups of BPP organized by the length of the recovery periods applicable under MACRS. The depreciation factors (percent good of price paid by current owner for the item without freight, installation, or sales or use tax) established by Section 137.122 RSMo, applicable to each group are also provided. The percent good factor is simply determined by matching the recovery period with the years since placed in service.

2. Alphabetical Listing of BPP Groups – The second listing provides each type of property alphabetically followed by the *Asset Class* numbers and recovery period for that type of asset.

**NOTE: The listings below are abbreviated versions of the more detailed descriptions found in *Publication 946*. That publication must be consulted to accurately determine recovery periods.**

### **(1) LIST OF BPP GROUPS BY RECOVERY PERIOD**

#### **3 Year--Business Personal Property with 3 Year Recovery Period**

Property within the 3 year recovery period is depreciated by years in service as follows:  
Year 1 – 75%; Year 2 – 37.5%; Year 3 – 12.5%; Year 4 and Subsequent Years – 5%



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BPP falling in this recovery period are listed below, followed by the identifying Asset Class number from *Publication 946*.

BPP used in the manufacture of:

1. **Food and Beverages** – Special Handling Devices (Asset Class 20.5)
2. **Rubber Products** – Special Tools and Devices (Asset Class 30.11)
3. **Finished Plastic Products** – Special Tools (Asset Class 30.21)
4. **Glass Products** – Special Tools (Asset Class 32.11)
5. **Fabricated Metal Products** – Special Tools (Asset Class 34.01)
6. **Motor Vehicles** – Special Tools such as jigs, dies, molds, etc., used in the manufacture of motor vehicles (Asset Class 37.12)

#### **5 Year--Business Personal Property with 5 Year Recovery Period**

Property within the 5 year recovery period is depreciated by years in service as follows:  
Year 1 – 85%; Year 2 – 59.5%; Year 3 – 41.65%; Year 4 – 24.99%; Year 5 and Subsequent Years – 10%

BPP falling in this recovery period are listed below, followed by the identifying Asset Class number from *Publication 946*.

1. **Information Systems and Data Handling Equipment (Including Computers)** used in all business activities for administering normal business transactions and the maintenance of business record (Asset Class 00.12 & 00.13)
2. **Trailers and Trailer-Mounted Containers** (Asset Class 00.27)
3. Assets used in **Construction** (Asset Class 15.0)
4. Assets used in **Cutting of Timber** (Asset Class 24.1)
5. Assets used in **Sawing of Dimensional Stock from Logs** when sawmill is on temporary foundation (Asset Class 24.3)
6. Any **Semiconductor Manufacturing Equipment** (Asset Class 36.1)
7. **Ship and Boat Building** – Special Tools (Asset Class 37.33)
8. **Computer-based Telephone Central Office Switching Equipment** (Asset Class 48.121)
9. **Radio and Television Broadcastings** – Telegraph, Ocean Cable, and Satellite Communications (TOCSC) (Asset Class 48.2)
10. **Satellite Space Segment Property** (TOCSC) (Asset Class 48.37)
11. **CATV** – Program Origination (Asset Class 48.43)
12. **CATV** – Service and Test (Asset Class 48.44)
13. **CATV** – Microwave Systems (Asset Class 48.45)
14. **Electric Utility Nuclear Fuel Assemblies** (Asset Class 49.121)



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#### **15. Distributive Trades and Services (Asset Class 57.0)**

*And assets used in the manufacture of:*

- 16. Knitted Goods (Asset Class 22.1)**
- 17. Carpets and Dyeing, Finishing, and Packaging of Textile Products and Manufacture of Medical and Dental Supplies (Asset Class 22.3)**
- 18. Textile Yarns (Asset Class 22.4)**
- 19. Apparel and Other Finished Products (Asset Class 23.0)**
- 20. Chemicals and Allied Products (Asset Class 28.0)**
- 21. Primary Nonferrous Metals – Special Tools used in the smelting and refining of nonferrous metals (Asset Class 33.21)**
- 22. Electronic Components, Products, and Systems (Asset Class 36.0)**

#### **7 Year--Business Personal Property with 7 Year Recovery Period**

Property within the 7 year recovery period is depreciated by years in service as follows:

Year 1 – 89.29%; Year 2 – 70.16%; Year 3 – 55.13%; Year 4 – 42.88%; Year 5 – 30.63%; Year 6 – 18.38%; Year 7 and subsequent years – 10.00%.

BPP falling in this recovery period are listed below, followed by the identifying Asset Class number from *Publication 946*.

- 1. Office Furniture, Fixtures, and Equipment** used in all business activities such as desks, files, safes and communications equipment, does not include communications equipment in other classes (Asset Class 00.11)
- 2. Cotton Ginning Assets (Asset Class 1.11)**
- 3. Mining** assets used in the mining and quarrying of metallic and nonmetallic minerals (Asset Class 10.0)
- 4. Assets used in **Sawing of Dimensional Stock from Logs** when sawmill is on permanent foundation or well-established (Asset Class 24.2)
- 5. Assets used in **Printing, Publishing, and Allied Industries (Asset Class 27.0)**
- 6. Assets used in **Ship and Boat Building Machinery and Equipment (Asset Class 37.31)**
- 7. Railroad Machinery and Equipment (Asset Class 40.1)**
- 8. Railroad Track (Asset Class 40.4)**
- 9. Assets used in **Air Transport (Asset Class 45.0)**
- 10. Telephone Station Equipment (Asset Class 48.13)**
- 11. High Frequency Radio and Microwave Systems (TOCSC) (Asset Class 48.32)**
- 12. Computerized Switching, Channeling, and Associated Control Equipment (TOCSC) (Asset Class 48.35)**
- 13. Satellite Ground Segment Property (TOCSC) (Asset Class 48.36)**



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14. **Equipment Installed on Customer's Premises (TOCSC)** (Asset Class 48.38)
15. **Support and Service Equipment (TOCSC) – Cable Television (CATV)** (Asset Class 48.39)
16. **CATV – Headend** (Asset Class 48.41)
17. **CATV – Subscriber Connection and Distribution Systems** (Asset Class 48.42)
18. **Gas Utility Substitute Natural Gas (SNG) Production Plant** (Asset Class 49.222)
19. **Natural Gas Production Plant** (Asset Class 49.23)
20. **Waste Reduction and Resource Recovery Plants** (Asset Class 49.5)
21. **Recreation** (Asset Class 79.0)
22. **Theme and Amusement Parks** (Asset Class 80.0)

*And, assets used in the Manufacture of:*

23. **Other Food and Kindred Products** (Asset Class 20.4)
24. **Tobacco and Tobacco Products** (Asset Class 21.0)
25. **Yarn, Thread, and Woven Fabric** (Asset Class 22.2)
26. **Non-woven Fabrics** (Asset Class 22.5)
27. **Wood Products and Furniture** (Asset Class 24.4)
28. **Pulp and Paper** (Asset Class 26.1)
29. **Converted Paper, Paperboard, and Pulp Products** (Asset Class 26.2)
30. **Rubber Products** (Asset Class 30.1)
31. **Finished Plastic Products** (Asset Class 30.2)
32. **Leather and Leather Products** (Asset Class 31.0)
33. **Glass Products** (Asset Class 32.1)
34. **Other Stone and Clay Products** (Asset Class 32.3)
35. **Primary Nonferrous Metals – special tools used in the manufacture of** (Asset Class 33.2)
36. **Foundry Products** (Asset Class 33.3)
37. **Primary Steel Mill Products** (Asset Class 33.4)
38. **Fabricated Metal Products** (Asset Class 34.0)
39. **Electrical and Non-Electrical Machinery and Other Mechanical Products** (Asset Class 35.0)
40. **Motor Vehicles** assets used in the manufacture of (Asset Class 37.11)
41. **Aerospace Products** (Asset Class 37.2)
42. **Locomotives** (Asset Class 37.41)
43. **Railroad Cars** (Asset Class 37.42)
44. **Athletic, Jewelry, and Other Goods** (Asset Class 39.0)

### **10 Year--Business Personal Property with 10 Year Recovery Period**

Property within the 10 year recovery period is depreciated by years in service as follows:



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Year 1 – 92.50%; Year 2 – 78.62%; Year 3 – 66.83%; Year 4 – 56.81%; Year 5 – 48.07%;  
Year 6 – 39.33%; Year 7 – 30.59%; Year 8 – 21.85%; Year 9 and subsequent years – 15.00%

Business personal property falling in this recovery period are listed below, followed by the identifying Asset Class number from *Publication 946*.

1. **Vessels, Barges, Tugs, and Similar Water Transportation Equipment** except those used in marine construction (Asset Class 00.28)
2. **Petroleum Refining** (Asset Class 13.3)
3. **Telephone Central Office Equipment** (Asset Class 48.12)
4. **TOCSC – Electric Power Generating and Distribution Systems** (Asset Class 48.31)
5. **TOCSC – Central Office Control Equipment** (Asset Class 48.34)

*And assets used in the Manufacture of:*

6. **Grain and Grain Mill Products** (Asset Class 20.1)
7. **Vegetable Oils and Vegetable Oil Products** (Asset Class 20.3)
8. **Ship and Board Building, Dry Docks, and Land Improvements** (Asset Class 37.32)
9. **Sugar and Sugar Products** (Asset Class 20.2)
10. **Substitute Natural Gas – Coal Gasification** (Asset Class 49.223)

### **15 Year--Business Personal Property With 15 Year Recovery Period**

Property within the 15 year recovery period is depreciated by years in service as follows:

Year 1 – 95.00%; Year 2 – 85.50%; Year 3 – 76.95%; Year 4 – 69.25%; Year 5 – 62.32%; Year 6 – 56.09%; Year 7 – 50.19%; Year 8 – 44.29%; Year 9 – 38.38%; Year 10 – 32.48%; Year 11 – 26.57%; Year 12 – 20.67%; Year 13 and subsequent years – 15.00%

Business personal property falling in this recovery period are listed below, followed by the identifying Asset Class number from *Publication 946*.

1. Assets used in the **Manufacture of Cement** (Asset Class 32.2)
2. **Railroad Nuclear Electric Generating Equipment** (Asset Class 40.52)
3. **Water Transportation** (Asset Class 44.0)

### **20 Year--Business Personal Property With 20 Year Recovery Period**

Property within the 20 year recovery period is depreciated by years in service as follows:

Year 1 – 96.25%; Year 2 – 89.03%; Year 3 – 82.35%; Year 4 – 76.18%; Year 5 –



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70.46%; Year 6 – 65.18%; Year 7 – 60.29%; Year 8 – 55.77%; Year 9 – 51.31%; Year 10 – 46.85%; Year 11 – 42.38%; Year 12 – 37.92%; Year 13 – 33.46%; Year 14 – 29.00%; Year 15 – 24.54%; Year 16 – 20.08%; Year 17 and subsequent years– 20.00%

Business personal property falling in this recovery period are listed below, followed by Asset Class number from *Publication 946*.

1. **Railroad Hydraulic Electric Generating Equipment** (Asset Class 40.51)
2. **Railroad Steam Electric Generating Equipment** (Asset Class 40.53)
3. **Railroad Steam, Compressed Air, and Other Power Plant Equipment**  
(Asset Class 40.54)
4. **TOCSC – Cable and Long Line Systems** (Asset Class 48.33)
5. **Electric, Gas, Water and Steam, Utility Services; Electric Utility Hydraulic Production Plant; Electric Utility Steam Production Plant; Electric Utility Transmission and Distribution Plant; Gas Utility Distribution Facilities; Gas Utility Manufactured Gas Production Plants; Water Utilities; Central Steam Utility Production and Distribution; and Municipal Sewer** (Asset Classes 49.11, 49.13, 49.14 49.21, 49.221, 49.3, 49.4, and 51)



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#### **(2) ALPHABETICAL LISTING OF BPP GROUPS**

**Aerospace Products** (Asset Class 37.2) —7 years

**Air Transport** assets used in (Asset Class 45.0) —7 years

**Apparel and Other Finished Products** assets used in the manufacture of (Asset Class 23.0) —5 years

**Athletic Goods, Jewelry, and Other Goods** used in the manufacture of (Asset Class 39.0) —7 years

**Broadcasting--Radio and Television Broadcastings**—See Section 137.078 RSMo, for assessment of broadcasting equipment.

**CATV – Headend** (Asset Class 48.41) —7 years

**CATV – Microwave Systems** (Asset Class 48.45) —5 years

**CATV – Program Origination** (Asset Class 48.43) —5 years

**CATV – Service and Test** (Asset Class 48.44) —5 years

**CATV – Subscriber Connection and Distribution Systems** (Asset Class 48.42) —7 years

**CATV-- Support and Service Equipment – Cable Television** (Asset Class 48.39) —7 years

**Cement** assets used in the manufacture of (Asset Class 32.2) —15 years

**Chemicals and Allied Products** assets used in the manufacture of (Asset Class 28.0) —5 years

**Computers--Information Systems and Data Handling Equipment** used in all business activities for administering normal business transactions and the maintenance of business records (Asset Class 00.12 & 00.13) —5 years

**Construction** assets used in (Asset Class 15.0) — 5 years

**Converted Paper, Paperboard, and Pulp Products** assets used in the manufacture of (Asset Class 26.2) —7 years

**Cotton Ginning Assets** (Asset Class 1.11) —7 years

**Distributive Trades and Services** (Asset Class 57.0) —5 years

**Electric Utility Nuclear Fuel Assemblies** (Asset Class 49.121) —5 years

**Electric Utility**—See, Utilities

**Electrical and Non-Electrical Machinery and Other Mechanical Products** (Asset Class 35.0) —7 years

**Electronic Components, Products, and Systems** assets used in the manufacture of (Asset Class 36.0) —5 years

**Fabricated Metal Products** assets used in the manufacture of (Asset Class 34.0) —7





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years

**Fabricated Metal Products** – Special Tools (Asset Class 34.01)—3 years

**Finished Plastic Products** – Special Tools (Asset Class 30.21)—3 years

**Finished Plastic Products** assets used in the manufacture of (Asset Class 30.2) —7 years

**Food and Beverages** – Special Handling Devices (Asset Class 20.5) 3 years

**Food and Kindred Products** assets used in the manufacture of (Asset Class 20.4) —7 years

**Foundry Products** (Asset Class 33.3) —7 years

**Gas Utility Substitute Natural Gas (SNG) Production Plant** (Asset Class 49.222) —7 years

**Gas Utility—See Utilities**

**Glass Products** – Special Tools (Asset Class 32.11)—3 years

**Glass Products** assets used in the manufacture of (Asset Class 32.1) —7 years

**Grain and Grain Mill Products** assets used in the manufacture of (Asset Class 20.1) —10 years

**Information Systems and Data Handling Equipment** used in all business activities for administering normal business transactions and the maintenance of business records (Asset Class 00.12 & 00.13)—5 years

**Knitted Goods** assets used in the manufacture of (Asset Class 22.1)—5 years

**Leather and Leather Products** assets used in the manufacture of (Asset Class 31.0) —7 years

**Locomotives** (Asset Class 37.41) —7 years

**Metals--Fabricated Metal Products** assets used in the manufacture of (Asset Class 34.0) —7 years

**Metals--Fabricated Metal Products** – Special Tools (Asset Class 34.01) —3 years

**Metals--Primary Nonferrous Metals** Special Tools, such as dies, jigs, molds, etc., used in the manufacture of (Asset Class 33.21) —5 years

**Metals—Primary Nonferrous Metals** assets used in the smelting and refining of (Asset Class 33.2) —7 years

**Mining** assets used in the mining and quarrying of metallic and nonmetallic minerals (Asset Class 10) – 7 years

**Motor Vehicles** – Special Tools such as jigs, dies, molds, etc., used in the manufacture of motor vehicles (Asset Class 37.12) – 3 years

**Motor Vehicles** assets used in the manufacture of (Asset Class 37.11) – 7 years

**Natural Gas Production Plant** (Asset Class 49.23) —7 years



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**Non-woven Fabrics** assets used in the manufacture of (Asset Class 22.5) —7 years

**Office Furniture, Fixtures, and Equipment** used in all business activities such as desks, files, safes, and communications equipment, does not include communications equipment in other classes (Asset Class 00.11)—7 years

**Paper--Converted Paper, Paperboard, and Pulp Products** assets used in the manufacture of (Asset Class 26.2) —7 years

**Parks--Theme and Amusement Parks** (Asset Class 80.0) —7 years

**Petroleum Refining** (Asset Class 13.3) —10 years

**Plastics--Finished Plastic Products – Special Tools** (Asset Class 30.21)—3 years

**Plastics--Finished Plastic Products** assets used in the manufacture of (Asset Class 30.2) —7 years

**Primary Nonferrous Metals Special Tools**, such as dies, jigs, molds, etc., used in the manufacture of (Asset Class 33.21) — 5 years

**Primary Nonferrous Metals** assets used in the smelting and refining of (Asset Class 33.2) —7 years

**Primary Steel Mill Products** (Asset Class 33.4) —7 years

**Printing, Publishing, and Allied Industries** assets used in (Asset Class 27.0) —7 years

**Production Plant; Electric Utility Steam Production Plant; Electric Utility Transmission and Distribution Plant; Gas Utility Distribution Facilities; Gas Utility Manufactured Gas Production Plants; Water Utilities; Central Steam Utility**

**Production and Distribution; and Municipal Sewer** (Asset Classes 49.11, 49.13, 49.14, 49.21, 49.221, 49.3, 49.4, and 51) —20 years

**Pulp and Paper** assets used in the manufacture of (Asset Class 26.1) —7 years

**Railroad Cars** (Asset Class 37.42) —7 years

**Railroad Hydraulic Electric Generating Equipment** (Asset Class 40.51) —20 years

**Railroad Machinery and Equipment** (Asset Class 40.1) —7 years

**Railroad Nuclear Electric Generating Equipment** assets used in the manufacture of (Asset Class 40.52) —15 years

**Railroad Steam Electric Generating Equipment** (Asset Class 40.53) —20 years

**Railroad Steam, Compressed Air, and Other Power Plan Equipment** (Asset Class 40.54) —20 years

**Railroad Track** (Asset Class 40.4) —7 years

**Railroads-- Locomotives** (Asset Class 37.41) —7 years

**Recreation** (Asset Class 79) —7 years

**Rubber Products – Special Tools and Devices** (Asset Class 30.11) 3 years

**Rubber Products** assets used in the manufacture of (Asset Class 30.1) —7 years

**Satellite Space Segment Property (TOCSC)** (Asset Class 48.37) —5 years



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**Sawing of Dimensional Stock from Logs** assets used in permanent or well-established sawmills (Asset Class 24.2) —7 years

**Sawing of Dimensional Stock from Logs** assets used in sawmill on temporary foundation (Asset Class 24.3)—5 years

**Semiconductor Manufacturing Equipment** (Asset Class 36.1) —5 years

**Ship and Boat Building, Dry Docks, and Land Improvements** assets used in the manufacture of (Asset Class 37.32) —10 years

**Ship and Boat Building – Special Tools** (Asset Class 37.33) —5 years

**Ship and Boat Building Machinery and Equipment** assets used in (Asset Class 37.31) —7 years

**Steel-Primary Steel Mill Products** (Asset Class 33.4) —7 years

**Stone and Clay Products** assets used in the manufacture of (Asset Class 32.3) —7 years

**Substitute Natural Gas – Coal Gasification** assets used in the manufacture of (Asset Class 49.223) —10 years

**Sugar and Sugar Products** assets used in the manufacture of (Asset Class 20.2) —10 years

**Telegraph, Ocean Cable, and Satellite Communications, See TOCSC**

**Telephone Central Office Equipment** (Asset Class 48.12) —10 years

**Telephone Station Equipment** (Asset Class 48.13) —7 years

**Telephone--Computer-based Telephone Central Office Switching Equipment** (Asset Class 48.121) —5 years

**Textile Yarns** assets used in the manufacture of (Asset Class 22.4) —5 years

**Textiles-- Yarn, Thread, and Woven Fabric** assets used in the manufacture of (Asset Class 22.2) —7 years

**Textiles--Carpets and Dyeing, Finishing, and Packaging of Textile Products, and Manufacture of Medical and Dental Supplies** assets used in the manufacture of (Asset Class 22.3) —5 years

**Textiles—Non-woven Fabrics** assets used in the manufacture of (Asset Class 22.5) —7 years

**Theme and Amusement Parks** (Asset Class 80.0) —7 years

**Timber**, assets used in **Cutting of Timber** (Asset Class 24.1) —5 years

**Tobacco and Tobacco Products** assets used in the manufacture of (Asset Class 21.0) —7 years

**TOCSC – Broadcasting Equipment** (Asset Class 48.2) —5 years

**TOCSC – Cable and Long Line Systems** (Asset Class 48.33) —20 years

**TOCSC – Central Office Control Equipment** (Asset Class 48.34) —10 years

**TOCSC--Computerized Switching, Channeling, and Associated Control Equipment** (Asset Class 48.35) —7 years

**TOCSC – Electric Power Generating and Distribution Systems** (Asset Class 48.31) —10 years



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**TOCSC--Equipment Installed on Customer's Premises** (Asset Class 48.38) —7 years

**TOCSC – High Frequency Radio and Microwave Systems** (Asset Class 48.32) —7 years

**TOCSC-- Satellite Space Segment Property** (Asset Class 48.37) —5 years

**TOCSC--Telegraph, Ocean Cable, and Satellite Communications** (Asset Class 48.36)—7 years

**Trailers and Trailer-Mounted Containers** (Asset Class 00.27) —5 years

**Utilities--Production Plant; Electric Utility Steam Production Plant; Electric Utility Transmission and Distribution Plant; Gas Utility Distribution Facilities; Gas Utility Manufactured Gas Production Plants; Water Utilities; Central Steam Utility Production and Distribution; and Municipal Sewer** (Asset Classes 49.11, 49.13, 49.14, 49.21, 49.221, 49.3, 49.4, and 51) —20 years

**Vegetable Oils and Vegetable Oil Products** assets used in the manufacture of (Asset Class 20.3) – 10 years

**Vessels, Barges, Tugs, and Similar Water Transportation Equipment** except those used in marine construction (Asset Class 00.28) —10 years

**Waste Reduction and Resource Recovery Plants** (Asset Class 49.5) —7 years

**Water Transportation** (Asset Class 44.0) —15 years

**Water Utilities—See Utilities**

**Wood Products and Furniture** assets used in the manufacture of (Asset Class 24.4)—7 years

**Yarn, Thread, and Woven Fabric** assets used in the manufacture of (Asset Class 22.2) —7 years

## 2.4 EXEMPTIONS-OVERVIEW OF EXEMPTION LAWS OF THIS STATE

Deciding whether or not to exempt a property from taxation is often one of the most difficult decisions facing an assessor. Many worthy not-for-profit organizations which qualify for a sales tax exemption or federal not-for-profit status do not qualify for an ad valorem property tax exemption. This is difficult for the property owner to understand, and due to the complexity of exemptions, often difficult for the assessor to explain.

If an assessor is uncertain whether to grant an exemption, the State Tax Commission advises that the property be assessed and placed upon the tax rolls. The burden is then on the taxpayer to appeal to



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the Board of Equalization and, thereafter, to the State Tax Commission or the Circuit Court (See Section 138.430.3 RSMo), if necessary, to prove the exemption case in a more formal setting.

Many court decisions regarding exemptions are cited in the information below, and State Tax Commission decisions pertaining to exemptions can be searched at the Commission website: <https://stc.mo.gov/apps/stc/legal-decisions/> by using the key word “exemption.”

The basic statute controlling property tax exemptions is Section 137.100 RSMo, which tracks Article X, Section 6 of the Constitution of Missouri. Section 137.100 RSMo, reads:

137.100. The following subjects are exempt from taxation for state, county or local purposes:

- (1) Lands and other property belonging to this state;
- (2) Lands and other property belonging to any city, county or other political subdivision in this state, including market houses, town halls and other public structures, with their furniture and equipments, and on public squares and lots kept open for health, use or ornament;
- (3) Nonprofit cemeteries;
- (4) The real estate and tangible personal property which is used exclusively for agricultural or horticultural societies organized in this state, including not-for-profit agribusiness associations;
- (5) All property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes;
- (6) Household goods, furniture, wearing apparel and articles of personal use and adornment, as defined by the state tax commission, owned and used by a person in his home or dwelling place;
- (7) Motor vehicles leased for a period of at least one year to this state or to any city, county, or political subdivision or to any religious, educational, or charitable organization which has obtained an exemption from the payment of federal income taxes, provided the motor vehicles are used exclusively for religious, educational, or charitable purposes; and



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(8) Real or personal property leased or otherwise transferred by an interstate compact agency created pursuant to Sections 70.370 to 70.430 RSMo, or Sections 238.010 to 238.100 RSMo, to another for which or whom such property is not exempt when immediately after the lease or transfer, the interstate compact agency enters into a leaseback or other agreement that directly or indirectly gives such interstate compact agency a right to use, control, and possess the property; provided, however, that in the event of a conveyance of such property, the interstate compact agency must retain an option to purchase the property at a future date or, within the limitations period for reverters, the property must revert back to the interstate compact agency. Property will no longer be exempt under this subdivision in the event of a conveyance as of the date, if any, when:

(a) The right of the interstate compact agency to use, control, and possess the property is terminated;

(b) The interstate compact agency no longer has an option to purchase or otherwise acquire the property; and

(c) There are no provisions for reverter of the property within the limitation period for reverters.

(9) All property, real and personal, belonging to veterans' organizations. As used in this Section, "veterans' organization" means any organization of veterans with a congressional charter, that is incorporated in this state, and that is exempt from taxation under Section 501(c)(19) of the Internal Revenue Code of 1986, as amended.

The following overview explains the various areas of exemption in some detail. A familiarity with these concepts is essential when considering exemption requests.

### **1. OWNED BY STATE, COUNTY, OR OTHER POLITICAL SUBDIVISIONS**

Article X, Section 6 of the Missouri Constitution (as amended) provides that "all property, real and personal, of the State, counties and other political subdivisions" shall be exempt from taxation. Similarly, Section 137.100 RSMo, exempts "lands and other property belonging to any city, county, or other political subdivision in this state" from taxation.

This particular portion of the exemption statute is perhaps the easiest to apply in that it is based upon ownership of the property rather than the actual "use" of the property. Generally speaking, if the property is owned by the State, a county, or any other political subdivision of the State on the



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relevant tax day, it is exempt from taxation. The exception to this rule is a taxable leasehold interest in property owned by a governmental entity. This exception is discussed below.

The Missouri Supreme Court has held that when an exempt political subdivision purchases property at a tax sale and the owner does not pay the delinquent taxes during the redemption period, the political subdivision is not required to pay the delinquent taxes in order to receive the deed to the property from the Collector. *State ex rel. City of St. Louis v. Baumann*, 153 S.W.2d 31 (Mo. banc 1941). The Court stated that “[even] though taxes have been levied and assessed against a tract of land while under private ownership, if it be afterwards acquired by a governmental agency such taxes may not be collected.” *Id.* at 34.

Assessors frequently inquire concerning that status of leasehold interests in property owned by political subdivisions. The general rule in Missouri is that the exemption accorded to the governmental entity does not extend to a leasehold interest in such property because a leasehold interest is considered to be “real property” for the purpose of ad valorem taxation. See *Iron County v. State Tax Commission*, 437 S.W.2d 665 (Mo. banc 1968).

The Assessor is also presented with the problem of how to value this leasehold interest. The case of *Frontier Airlines, Inc. v. State Tax Commission*, 528 S.W. 2d 943 (Mo. banc 1975), indicates that such an interest should be valued by the bonus value method which is defined as the difference between economic rent and the contract rent for use and occupancy of the premises. The State Tax Commission applied this rule of law in the case of *Budget Rent-A-Car of Missouri v. Platte County*, STC Appeal Number 1980-7090, 1983 WL 15689.

There are some instances where the governmental entity’s interest in the property is not tantamount to “ownership” of the property. For example, in the case of *City of St. Louis v. Wenneker*, 47 S.W. 105 (Mo. 1898), the issue was whether or not certain real estate over which the City of St. Louis had been made trustee as part of a testamentary trust was exempt from taxation. The Court held that the real estate was not exempt, reasoning that the city, as trustee, was not allowed to use the property for its own benefit or for municipal purposes and that “the Constitution [of Missouri] should not be construed to exempt real estate held in trust by a city, and to require the taxation of that held by the same title and upon the same trust by an individual



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trustee.” *Id.* at 107.

In the administrative appeal of *City of Festus, Missouri v. Dougherty*, STC Appeal Number 89-34063 (1990), 1990 WL 136542, the issue was whether the subject property was taxable once it was quit-claimed to the City. The State Tax Commission found that the City was exempt from taxes, but the private lessee was taxable for any leasehold interest in the property.

In the case of *Land Clearance for Redevelopment Authority of Kansas City, Missouri v. Waris*, 790 S.W.2d 454 (Mo. banc 1990), the assessor had assessed property owned by LCRA of Kansas City. The Court found that LCRA was a part of the municipal structure of Kansas City and was exempt from taxation as a political subdivision.

In *St. Charles County and Zimmerman v. Curators of the University of Missouri, et al.*, 25 S.W.3d 159 (Mo. 2000), the court found a golf course lessee located in a University of Missouri Research Park to be taxable. Section 172.273 RSMo, authorized the University of Missouri to develop a research park and enter into long-term leases with individuals, companies, and corporations. The statute specifically said that all interests in such property belonged to the University and that “no leasehold or other interest therein . . . shall be separately assessed or taxed.” Under this umbrella, a golf course and various other improvements were built. Since 1994, the Assessor attempted to tax the golf course only to be thwarted by the board of equalization. Having no right to appeal a decision of the board, Mr. Zimmerman and the County instead initiated a declaratory judgment suit alleging that Section 172.273.3 RSMo, was unconstitutional.

The Supreme Court held the subsection to be unconstitutional and reaffirmed that leasehold interests are taxable. The court ruled:

Property which, in fact, does not belong to the state, cannot be made state property by legislative declaration. Neither can the Legislature exempt property from taxation by declaring that such property, for the purpose of taxation, shall be deemed state property, when in fact it is not state property.





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Generally, this portion of the exemption statute will pose few problems for assessors. The key things to keep in mind are that the exemption is based upon governmental ownership of the property rather than the use of the property and that a leasehold interest in such property, if not otherwise exempt, is subject to taxation if the leasehold interest has any value under the bonus value method of valuation.

### 2. **EXEMPTION FOR NONPROFIT CEMETERIES**

Article X, Section 6 of the Missouri Constitution (as amended) states that all nonprofit cemeteries shall be exempt from taxation. Section 137.100.3 RSMo, also contains this exemption.

Prior to the enactment of the statutory provision, the Missouri Supreme Court held that the provision in the Missouri Constitution exempting nonprofit cemeteries from taxation did not extend to grant an exemption to “personal property” owned by a cemetery association. *State ex rel. Mount Mora Cemetery Ass’n v. Casey*, 109 S.W. 1 (Mo. 1908).

The fact that a cemetery association owns the property does not, in and of itself, mandate an exemption for the property. The owner must show that the cemetery is not-for-profit and that the land is being used as a cemetery or that the land is in some way “set apart” for the burial of the dead. *National Cemetery Ass’n of Missouri v. Benson*, 129 S.W.2d 842 845 (Mo. 1939).

### 3. **EXEMPTION FOR THE REAL ESTATE AND TANGIBLE PERSONAL PROPERTY WHICH IS USED EXCLUSIVELY FOR AGRICULTURAL OR HORTICULTURAL SOCIETIES ORGANIZED IN MISSOURI**

Article X, Section 6 of the Missouri Constitution (as amended) provides that “all property, real and personal, not held for private or corporate profit and used exclusively...for agricultural and horticultural societies may be exempted from taxation by general law.” A Missouri statute also provides that “[t]he real estate and tangible personal property which is used exclusively for agricultural or horticultural societies organized in this state” is exempt from taxation. Section 137.100.4 RSMo.

The Missouri Supreme Court has construed this exemption narrowly, finding that it is not intended to



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exempt all “not for profit corporations engaged in agricultural activities, but only those unique societies organized as adjuncts of the State Board of Agriculture.” *American Polled Hereford Association v. City of Kansas City*, 626 S.W.2d 237 (Mo. 1982); *Kansas City Exposition Driving Park v. Kansas City*, 74 S.W. 979 (1903). The Missouri State Horticultural Society (Section 262.290 RSMo) and the County Agricultural Societies (Section 262.290 RSMo) appear to be the societies to which this portion of the exemption statute is directed.

The Court in *American Aberdeen Angus v. Stanton*, 762 S.W.2d 501 (Mo. App. 1988), relying on *American Polled Hereford*, determined that the subject association was a cattle breeding association and not an agricultural society as contemplated by Section 138.100(4) RSMo. That is, the association was not an adjunct of the Missouri Department of Agriculture.

#### **4. EXEMPTION FOR ALL PROPERTY ACTUALLY AND REGULARLY USED EXCLUSIVELY FOR RELIGIOUS WORSHIP, FOR SCHOOLS AND COLLEGES, OR FOR PURPOSES PURELY CHARITABLE**

Article X, Section 6 of the Missouri Constitution (as amended) provides as follows:

...all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, [or] for purposes purely charitable, ...may be exempted from taxation by general law.

Section 137.100.5 RSMo, provides as follows:

The following subjects are exempt from taxation for state, county, or local purposes:

(5) All property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational, or charitable purposes;....



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This particular provision of the Missouri exemption statute is the most difficult for assessors and courts to apply. This provision clearly bases the exemption upon the actual and regular use of the property. The taxpayer has the burden of proof with regard to showing that the property is actually being used for one of the exempt purposes listed. Although the exemption applies to each of the three uses listed, many taxpayers take the shotgun approach in claiming exempt status by asking the tribunal to find that the use of the property fulfills a combination of two, or all three of the uses. One court has stated, in dictum, that “at least certain religious purposes would appear to be within charitable use.” See *Pentecostal Church of God of America v. Hughlett*, 601 S.W.2d 666, 668 (Mo. App. 1980). The confusion has also been compounded by the adoption of the partial exemption rule by the Missouri Supreme Court and the subsequent “Application” of this doctrine by the Eastern District of the Missouri Court of Appeals. Some of these problems will be discussed below.

#### **A. EXEMPTION FOR ALL PROPERTY ACTUALLY AND REGULARLY USED FOR RELIGIOUS WORSHIP**

The leading case concerning exemption from taxation due to use of the property for religious workshop in Missouri is *Missouri Church of Scientology v. State Tax Commission*, 560 S.W.2d 837 (Mo. banc 1977). In the *Scientology* case, the Missouri Church of Scientology sought an exemption for personal property (office equipment and furniture) used by the Church in the promotion of the organization and for record keeping and providing mailings to the church membership. The Missouri Supreme Court focused on defining the words “religious worship” in the exemption statute in finding that the church’s personal property did not fall within the exemption. The Court states as follows:

The term religious worship in the commonly accepted sense includes as a necessary minimum a belief in the Supreme Being of the universe. Generally religious worship is expressed by prayers, reverence, homage and adoration paid to a deity and include the seeking out by prayer and otherwise the will of the deity for divine guidance. Webster’s New World Dictionary of the American Language, Second College Edition, copyrighted in 1974, defines religion as “belief in a divine or superhuman power or powers to be obeyed and worshiped as the creator [s] and ruler [s] of the universe; b) expression of such a belief in conduct and ritual.” “Worship” is defined as “reverence or devotion for a deity; religious homage or veneration; b) a church service or other right showing this.” *Id.* at 840.



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In the *Scientology* case, the Court rejected the stance of one California Court which had held that “the belief or non-belief in a Supreme Being” is a false factor in determining whether or not property is used for religious worship. *Fellowship of Humanity v. County of Alameda*, 153 Cal.App.2d 673, 315 P.2d 394 (1957). The California Court indicated that exemption laws should not include any reference to whether the beliefs involved are theistic or non-theistic. The Missouri Supreme Court in *Scientology, supra*, at 842 responded as follows to the position of the California Court:

Under this loose concept it is readily apparent any organization espousing moral principles, without theistic foundation, to which the membership openly express belief might opt for the exempt status. We are unwilling to ascribe such meaning to the expression “religious worship” in Missouri’s tax law. Instead, we conclude that the constitutional and statutory term religious worship or Article X, Section 6 and Section 137.100 embody as a minimum requirement a belief in the Supreme Being.

Pursuant to the guideline set forth in the *Scientology* case, the Missouri State Tax Commission has ruled that a “sanctuary” or “retreat” in Southwestern Missouri used for “individual worship” and the appreciation of nature is not exempt from taxation. See *Rivendell, Inc. v. Stone County*, STC Appeals Number 1981-7150 through 1981-7156, 1982 WL 12094.

The State Tax Commission has found that support property which is usually separate from the church itself, i.e., parking lots, storage buildings, vacant land, etc., is not exempt because it is not actually used for religious worship. See *Prairie Flower Bible Church v. Willis*, STC Appeal Number 85-36787 (1987), 1987 WL 51360, (storage buildings not exempt); *St. Margaret Mary Alacoque Catholic Church v. Morton*, STC Appeal Number 87-11754 (1989), 1989 WL 40989, (3 acres of land with janitor’s residence and storage units not exempt).

One case has dealt with buildings used for religious worship. In *Kallstrom v. Wilson*, STC Appeal Number 88-60000 (1989), 1989 WL 41004, the State Tax Commission found that a residence used only once a week for religious services was not exempt as property used exclusively for religious worship.



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Assessors frequently ask whether or not church parsonages are exempt from taxation. The Commission addressed the issue in *Mt. Branson Christian Church v. Strahan*, STC Appeal Number 98-89506 (1999), 1999 WL 264661, and found the parsonage to be exempt. The key language in that decision is as follows:

The issue of the tax exempt status of the parsonage has been determined by the Supreme Court of Missouri in *Central States, supra*. In *Central States*, rooms were being rented to students who were *spiritual leaders* for the Association. The Court found that the renting of rooms did not interrupt the exclusive occupation of the building for religious worship, but dovetailed into or rounded out that purpose. Citing *Midwest Bible and Missionary Inst. v. Sestric*, 260 S.W.2d 25, 30 (Mo. 1953). In holding the Central States property exempt, the Court stated: *Providing low cost housing to persons required to actively participate in advancing a religious worship purpose in a facility is incidental to religious worship, even though the hours spent socializing, eating, studying or resting may exceed the hours spent in purely religious devotions.*

The application of the reasoning of *Central States* requires a finding that the parsonage is exempt. The parsonage is provided at no cost to the minister and his family. Activities incident to worship in the church building, per se, are conducted in the parsonage, i.e., sermon preparation and study by the pastor. Indeed, at times worship activities take place in the parsonage, because it is the place of residence for the Complainant's minister. The holding of the Court in *Central States* is determined by the Hearing Officer to be controlling in this appeal and requires a parsonage to be exempt under Section 137.100(5) RSMo. Furthermore, the reasoning adopted by the Missouri Supreme Court in the cases of *Bethesda General Hospital v. STC*, 396 S.W.2d 631 (Mo. 1965) and *Jackson County v. STC*, 621 S.W.2d 378 (Mo.banc 1975) is applicable to the case at hand. The present case is analogous to both *Bethesda* and *Jackson County*. When considered together, *Central States*, *Bethesda*, and *Jackson County*, provide more than ample foundation for finding the subject parsonage to be exempt under Section 137.100 RSMo.



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Section 137.100.5 RSMo, specifically states that the exemption for religious worship, for schools and colleges or for purposes purely charitable does not include real property not actually used or occupied for the purpose of the organization but held or used as an investment even though the income or rentals received therefrom is used wholly for religious, educational, or charitable purposes. This particular provision appears to have been suggested by the case of *Evangelical Lutheran Synod v. Hoehn*, 196 S.W.2d 134 (No. 1946). In *Evangelical*, the taxpayers were the Evangelical Lutheran Synod of Missouri and the Publishing House, which was a wholly owned subsidiary of the Synod. The Publishing House published religious materials as well as other books and literature approved by the Synod. The business operated profitably and the profits went to the Synod for religious and charitable purposes. The Court held that the Publishing House was not exempt from taxation. The Court stated as follows at page 147:

[O]ne of the chartered objectives of the Publishing House is “the advancement and extension of knowledge and learning among people generally; and it is authorized to publish and sell (for profit) books and literature, and to acquire and operate real estate and publishing plants for that purpose. Any bona fide schoolbook or encyclopedic publishing concern could qualify under that provision. Nor do we think the situation is altered here by the fact that nearly all the sales for profit were of religious literature and made mostly to members of the denomination. Many books are sold competitively and for profit to a limited public, such as law books to lawyers. Appellants’ objectives are commendable, and there is no doubt that a charitable trust may operate for profit. But the only question here is whether the land on which appellants’ publishing enterprise is conducted is tax exempt; and our Constitution says tax exempt land must be used exclusively for religious worship or purposes purely charitable. A competitive commercial business operated for profit does not comply with that requirement, even though the profits are devoted to religion.



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Cases in this area, instead of clarifying the law, serve only to confuse the issue. In *Sunday School Board of the Southern Baptist Convention v. Mitchell*, 658 S.W. 2d 1 (Mo. banc 1983), the Supreme Court found that the subject religious bookstore was not exempt as property used exclusively for religious purposes. The Court, relying on *Evangelical*, found that the bookstore was operated as a competitive business with the purpose of producing a profit. (*Id.* at 7).

In *Herald Publishing House v. O'Flaherty*, STC Appeal Number 84-30014 (1986), 1986 WL 23270, the State Tax Commission found that this publishing business was run as a competitive commercial business and was not exempt as a place used exclusively for religious purposes. The trial court reversed the Commission in part, finding that a portion of the publishing business was used exclusively for religious purposes. The case was not appealed further.

In *Missouri Conference Association of Seventh Day Adventists v. State Tax Commission*, 727 S.W.2d 940 (Mo. App. 1987), the business consisted of a retail store which sold religious materials and food which complied with Seventh Day Adventist dietary restrictions. Much of this merchandise was available in other retail stores. However, the Court determined that the property was used in a charitable manner to supply literature and food stuffs to church members and that it benefitted society as a whole. The property was found to be exempt from taxation.

The final case in the area is *North American Islamic Trust v. Fenton*, STC Appeal Number 85-33556 (1988), 1988 WL 152991. The State Tax Commission found that two apartments and a grocery store which facilitated the religious worship of the group were not exempt because they were not used exclusively for religious purposes. This decision was not appealed.

On the whole, the courts appear to have construed the exemption for use for religious worship rather narrowly by limiting the exemption to the actual use of the property for the worship of "the Supreme Being." This would include property used for the religious services of most conventional denominations. Beyond this, it is difficult to set forth absolute guidelines. The facts of each case should be considered carefully.



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### **B. EXEMPTION FOR ALL PROPERTY USED EXCLUSIVELY FOR SCHOOLS AND COLLEGES**

The courts have shown a tendency to be fairly liberal in constructing the term “schools and colleges.” In the case of *YWCA v. Baumann*, 130 S.W.2d 499 (Mo. banc 1939), the YWCA claimed an exemption for real property used to house low income and homeless women. The owner claimed that all of the activities conducted on the property were evidence of use for charitable, religious, and educational purposes. The exemption statute at that time was similar to the current exemption statute in that it exempted property used for “schools.” Although the YWCA was not a “school” in the conventional sense, the Court noted as follows on page 502:

A large part of the activities of the Association clearly falls within one or another of the exempted purposes. Some may argue that the teaching of swimming, dancing, etc., is not a reasonable incident to or part of education, but it is not for us to write our personal views into the law. Such things are generally taught in our schools and have come to be a recognized part of our system of education. It makes no difference that fees are paid for such services, or that the recipients of such service pay for lodging, for the exemption applies to pay schools or boarding schools as well as free schools.

The fact that the use of the property in the *Baumann* case otherwise satisfied the charitable use requirement should not be discounted in analyzing this opinion.

One unusual case is *City of St. Louis v. State Tax Commission*, 524 S.W.2d 839 (Mo. banc 1975), in which the Missouri Supreme Court found that an engineers’ club was exempt. The Engineers’ Club of St. Louis was a non-profit corporation which had the stated corporate purpose of “promoting the educational and professional improvement of its members, to advance the field of engineering in its several branches, [and] to make available to the general public technical and scientific information and knowledge....” Membership in the club was limited to registered professional engineers or architects. The club has regularly scheduled programs on a number of topics. These programs were open to the public. The Missouri Supreme Court found that the entire property was exempt under the “charitable” exemption provision because the definition of “charity”





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included educating people. Since the engineers' club conducted seminars on engineering and other important topics, and since these seminars were open to the public, the Court reasoned that the real property owned and used by the club was exempt from taxation. The Court noted that the property would not have been exempt if the seminars, etc., had not been open to the public.

In the case of *State ex rel. Hammer v. Macgurn*, 86 S.W. 138 (Mo. 1905), the Missouri Supreme Court held that real property which was leased to a school and used for school purposes was not exempt from taxation when the owner of the property charged market rent for the property. The Court stated as follows at page 139:

[W]hen the owner leases his land to the public for a public use, or to a quasi public body for a charitable or religious use, and applies the rents derived from the land to his own personal advantage, he contributes nothing to the public or to charity, he loses nothing by the use, he is not a benefactor to any one, but he stands before the law in exactly the same light as any one else who leases his land for any other purpose and uses the rents for his own advantage, and therefore he is not entitled to any special consideration at the hands of the law or the government, and his property is not exempt. There would be just exactly as much, and no more or less, reason for holding that the property of one who sold provisions or supplies to a charitable institution, which were used to support the lives of the inmates thereof, appropriate to his own use the proceeds or products of his property, just the same as if it had been rented, or sold to a private citizen, or to a business concern; and in neither instance would the state of the charitable institution be benefitted one jot or tittle by the transaction, for it would pay a full consideration for all it got.

In the case of *State ex rel. Spillers v. Johnston*, 113 S.W. 1083 (Mo. 1908), an exemption was sought for the Kemper Military Academy in Boonville, Missouri. The issue was whether or not the fact that the school contained apartments housing the family of the owner of the school destroyed the exemption to which the school would normally be entitled. The Court answered this question in the negative, setting forth some language which was cited in many subsequent cases and which has been overruled by the Missouri Supreme Court in the *Barnes Hospital* case, *infra*. The Court in *Spillers* stated as follows on page 1085:



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The phrase “exclusively used” has reference to the primary and inherent use as over against a mere secondary and incidental use. If the incidental use (in this instance residing in the building) does not interrupt the exclusive occupation of the building for school purposes, but dovetails into or rounds out those purposes, then there could fairly be said to be left an exclusive use in the school on which the law lays hold.

The Court in *Spillers* also recognized Missouri’s “all or nothing” rule with regard to exemptions. This rule holds that if a portion of the property is used for a non-exempt purpose, then the entire property is taxable. In creating the “dovetails” argument, it appears that the Court in *Spillers* was attempting to avoid the rather harsh result of the “all or nothing” rule. In *Spillers*, the Court found that the use of a portion of the school to house the owner of the school did dovetail and round out the use of the property for school purposes in that the owner of the property was responsible for running the school and his wife and family helped in this endeavor. The effect of the *Barnes Hospital* case on the “dovetails” argument is discussed later in Section VI.

The State Tax Commission has issued the following decisions in this area:

In *Cape Girardeau and Jackson Cable T.V. v. Reynolds*, STC Appeal Number 85-34202 (1987), 1987 WL 51247, the taxpayer, a cable company, sought an exemption for a local origination studio located on the Southeast Missouri State University campus, claiming that the equipment was used exclusively for educational purposes. The Commission found that the equipment was not used exclusively for educational purposes, but was primarily dedicated to local programming not related to education.

In several other cases, the State Tax Commission found the subject properties exempt; *The Nature Conservancy v. Lack*, STC Appeals Number 85-35203, et al. (1987), 1987 WL 51399, (nature conservancy land used for educational, charitable purposes); *L-A-D Foundation v. Koch*, STC Appeal Number 1981-7800 (1982), 1982 WL 16063, (land used to promote forestry, agriculture and horticulture); *International University Foundation v. O’Flaherty*, STC Appeal Number 1983-5104 (1985), 1985 WL 16063, (house used as administrative offices and headquarters of International University); *Laura Ingalls Wilder Home Association v. Day*, STC Appeal Number 85-92400 (1988), 1988 WL 152969, (Laura Ingalls Wilder home and museum).



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It is difficult to set forth specific guidelines for property used for schools and colleges. The case law indicates that property used for both public and private schools and colleges is exempt. The courts have also shown a tendency to construe the phrase “schools and colleges” as including property used for general “educational” purposes as well by characterizing the use as one typically provided in conventional schools and colleges or by characterizing the use as “educational” and therefore “charitable.”

### **C. EXEMPTION FOR ALL PROPERTY ACTUALLY AND REGULARLY USED EXCLUSIVELY FOR PURPOSES PURELY CHARITABLE**

#### **(1) THE FRANCISCAN TEST**

The leading case with regard to the exemption for charitable use in Missouri is *Franciscan Tertiary Province of Missouri, Inc. v. State Tax Commission of Missouri*, 566 S.W.2d 213 (Mo. banc 1978). This case sets forth the guidelines to be considered by assessors and courts in determining whether or not property is exempt from ad valorem taxation due to charitable use. The three-part *Franciscan* test, as clarified in *Barnes Hospital v. Leggett*, 589 S.W.2d 241 (Mo. banc 1979), follows:

1. The property must be actually and regularly used exclusively for a charitable purpose, as charity is defined by *Salvation Army v. Hoehn*, 1888 S.W.2d 286 (Mo. banc 1945). “Charity” is therein defined as “...a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies of disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining the public buildings or works or otherwise lessening the burdens of government.” *Salvation Army, supra*, at 830.

2. The property must be owned and operated on a not-for-profit basis. The property “must be dedicated unconditionally to the charitable activity in such a way that there will be no profit, presently or prospectively, to individuals or corporations. Any gain achieved in use of the building must be devoted to achievement of the charitable objectives of the projects.” *Franciscan Tertiary Province v. State Tax Commission of Missouri*, 566 S.W.2d 213, at 224 (Mo. banc 1978).



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**3.** The dominant use of the property must be for the benefit of an indefinite number of persons and must directly or indirectly benefit society generally. “It is required that there be the element of direct or indirect benefit to society in addition to and as a result of the benefit conferred on the persons directly served by the humanitarian activity.” *Franciscan, supra*, at 224.

The Court pointed out that this requirement does not preclude a project from operating in the black rather than on a deficit basis as long as the gain is achieved “incidentally to accomplishment of the dominantly charitable objective and is not a primary goal of the project, and provided further that all of such gain is devoted to the charitable objectives of the projects.” *Franciscan* at 224.

Examples provided in *Franciscan* of activities held to be exempt as charitable include the operation of hospitals which are open and available to rich and poor (*Community Memorial* and *Jackson County*); a facility operated to provide employment and training for handicapped person (*Goodwill*); operating a YMCA building housing boys and young men, preferably of low income, as a part of a program intended to foster good citizenship and Christian ideals in those boys and young men (*YMCA No. 4*); providing housing at less than cost to girls and young women, including the needy, intended to promote the welfare of such persons (*Salvation Army*); providing good low-cost housing for low income people to replace old, dilapidated properties in a slum area which was cleared (*Bader*

*Realty*). All of these, while benefitting the individuals served, also were considered to benefit society generally.

The requirement of a direct or indirect benefit to society exacts a quid pro quo for the exemption. The owner must adduce sufficient evidence from which a court could find that society benefits from the use of the property as a result of the benefit conferred upon certain individuals. As pointed out in *Franciscan*, hospitals fulfill this requirement as long as they are open to rich and poor alike. Sheltered workshops are also exempt under this Section, even if they do make a profit, so long as the profit is incident to the purpose of the workshop to provide work for the physically and mentally handicapped, and is used to further the charitable objectives of the projects. Housing provided at less than cost for those who would otherwise be unable to reside in decent housing due to low incomes or minimal assets also fulfills the requirement.



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#### (2) **SENIOR CITIZEN HOUSING**

*Community Park Village v. State Tax Commission of Missouri*, 652 S.W.2d 179 (Mo. App. 1983), concerned a housing complex which was in part funded by the federal government and which provided housing for a substantial number of students at a nearby University, as well as for a few elderly retired persons. The Court found that the project was not exempt from taxation. With regard to the last prerequisite set forth in the *Franciscan* case, the Court states that "...it is not enough that the benefits relieve burdens from those directly participating, society as well must gain. The use of the property taken from the tax rolls must relieve some public obligation as by reducing the likelihood that persons will become public charges or will be forced into living conditions conducive to increasing society's problems."

[W]e conclude that Community does not meet the constitutional and statutory requirements for tax exemption prescribed by the cited cases. The sole and exclusive benefit to the tenants of Community is reduced rent. There are no programs of social, moral or religious activities, no contributions to the general welfare of the tenants and no purpose for the project except to supply low income housing. While a minimal number of tenants are retired persons, the project serves, in the main, the needs of students and faculty at the university. There was no proof whatever that the occupants would be relegated to substandard living condition without the project or that they could not afford accommodations rented on the open market. *Id.* at 182.

The courts have dealt with a number of cases involving the taxable status of senior citizen housing. In four cases the property was found to be exempt from taxation. (*Senior Citizens of Bootheel Services, Inc. v. Dover*, 798 S.W. 2d 201 (Mo. App. 1990); *Pentecostal Church of God v. Hughlett*, 737 S.W.2d 278 (Mo. banc 1987); *Missouri United Methodist Retirement Homes v. State Tax Commission*, 552 S.W.2d 745 (Mo. 1975); *Rolla Apartments/Overall Construction Industries, Inc. v. State Tax Commission*, 797 S.W.2d 781 (Mo. App. 1990)). In four cases the property was found to be taxable. (*Cape Retirement Community, Inc. v. Kuele*, 798 S.W.2d 201 (Mo. App. 1990); *Evangelical Retirement Homes of Greater St. Louis, Inc. v. State Tax Commission of Missouri*, 669 S.W.2d 548 (Mo. banc 1984); *John Calvin Manor, Inc. v. State Tax Commission*, 522 S.W.2d 754 (Mo. 1974); *Paraclete Manor of Kansas City v. State Tax Commission*, 447 S.W.2d 311 (Mo. 1969)). In *Village North, Inc. v. State Tax Commission of Missouri*, 799 S.W.2d 197 (Mo. App.



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1990), the property was found to be partially exempt and partially taxable.

In a later case, *Bethesda Barclay House v. Ciarleglio*, 88 S.W.3d 85, (Mo.App.E.D.2002), the court found property of a retirement community to be taxable. The Barclay House property was a sixteen-story retirement facility restricted to persons sixty-five years of age or older. Tenants were required to pay an entrance fee, which ranged from approximately \$40,000 to \$395,000, and monthly rent ranging from \$850 to \$1,600.

According to the court, the property failed the *Franciscan* test on several issues. The decision found that the property, while owned on a not-for-profit basis, was not operated in such a manner. Excess monies were being used to pay off a loan to an affiliated company ahead of schedule and future revenues were projected to continue to exceed expenses. The court also found that the home was advertised as a luxurious and extravagant facility and not as a facility with charitable purposes. Finally, the court determined that the facility did not benefit an indefinite number of people. The decision ended with:

There is no evidence that society as a whole has derived any benefit as a result of the five cases where discounts were given from Barclay House. In fact, the discounts in these five cases accounted for less than one percent of Barclay House's total revenues for 1997, 1998, and 1999. In *Evangelical*, the Supreme Court found that the facility's "services were effectively denied to a large percentage of the elderly on the basis of finances." (*Cite omitted*). Like in our case, the waiver or reduction of fees in *Evangelical* was minimal. (*Cite*

*omitted*). Thus, Barclay House failed to show the use of the property benefits an indefinite number of the elderly.

Barclay House failed to prove that it operated on a not-for-profit basis. It also failed to prove that the property is dedicated unconditionally to the charitable activity. Further, Barclay House failed to prove that the property's use benefits an indefinite number of people or society in general. Because Barclay House did not satisfy these three prongs, we conclude that it is ineligible for exemption from ad valorem taxes for the property.

A look at the cases reveals that all cases where the property has been found to be exempt involve either publicly or privately subsidized housing. On the other hand, those properties found to be taxable involve self-supporting developments which, as a general rule, require a substantial financial outlay by the respective residents. In the *Village North* case, the residential portion of the property was found to be of this latter type, but the associated nursing facility was operated on a charitable basis.



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### (3) HOSPITAL/MEDICAL PROPERTY

The Court has allowed charitable exemptions for medical facilities and services in those cases where the property met the *Franciscan* test. (*Affiliated Medical Transport, Inc. v. State Tax Commission*, 755 S.W. 2d 646 (Mo. App. 1988) (ambulance service which provided some charity transport); *Callaway Community Hospital Association v. Craighead*, 759 S.W.2d 253 (Mo. App. 1988) (hospital exempt because there was no proof they did not provide indigent care); *Spelman/St. Luke's Hospital Corporation v. Platte County Board of Equalization*, 812 S.W.2d 196 (Mo. App. 1991) (hospital exempt even though not yet open for operation on tax day).

Medical facilities have also produced one of the gray areas of exemption law, the partial exemption as established in *Barnes Hospital v. Leggett*, 589 S.W.2d 241 (Mo. banc 1979). Several hospital and medical facility cases deal with the partial exemption issue. These will be discussed in more detail later.

### (4) MISCELLANEOUS CASES

To qualify for a charitable exemption, the property must meet the *Franciscan* test. As noted above, some senior citizens housing and most not-for-profit hospitals can meet this test. Other types of property seldom do. In *Home Builders Association v. St. Louis County Board of Equalization*, 803 S.W.2d 636 (Mo. App. E.D. 1991), the Court found that property used as the headquarters for a not-for-profit business league was not exempt. The main purpose of the organization was to promote the business interests of its members.

In the case of *Baptist Bookstore v. Mitchell*, 658 S.W.2d 1 (Mo. banc 1983), the Missouri Supreme Court denied an exemption to a bookstore operated by the Sunday School Board of the Southern Baptist Convention which sold books to the general public as well as to churches and Sunday schools. The literature sold was not purely denominational. The profits from the bookstore were used to help defray the general and administrative expenses of the Southern Baptist Convention. The Court characterized the bookstore as primarily a private enterprise which devoted its profits to religious purposes. The Court found that "there must be a more significant nexus between profits earned through use of the property for which an exemption is sought and the use that is made of those profits. A business cannot compete for profit and then seek to insulate itself from taxation by



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claiming that its profits are used to attain a religious or charitable purpose.”

In *Wholistic Life Church, Inc. v. Christerson*, 968 S.W.2d 190, (Mo.App.S.D.1998) the court held that a not-for-profit corporation that offered workshops and counseling to the public, provided sanctuary to troubled or disabled individuals, and conducted religious services qualified for a real estate tax exemption. The court stated that was entitled to the exemption because the property was used for purposes purely charitable, services were offered free to everyone, and no one was refused.

#### (5) **CONCLUSION**

To summarize, in order for a property owner to obtain an exemption on the basis of charitable use the owner must show that (1) the property is actually and regularly used exclusively for charitable purposes; (2) that the property is owned and operated on a not-for-profit basis; and that (3) the dominant use of the property is used for the benefit of an indefinite number of people and directly or indirectly benefits society in general. *Barnes Hospital v. Leggett*, 589 S.W.2d 241 (Mo. banc 1979).

### 5. **PARTIAL EXEMPTIONS**

Prior to the case of *Barnes Hospital v. Leggett*, 589 S.W.2d 241 (Mo. banc 1979), there were two oft-cited rules which were applied to exemptions based upon the use of the property (use for religious worship, for schools and colleges, and for charitable purposes). These rules were developed to aid in the interpretation of the phrase “used exclusively” in the exemption statute.

One rule, known as the “all or nothing rule,” stated that where one part of a tract was used for non-exempt purposes, the entire property was taxable since the property was not used “exclusively” for the exempt purpose. *Evangelical*, at 271. A second rule was developed to avoid the harsh application of the “all or nothing” rule. It stated that the phrase “exclusively used” referred to “the primary and inherent use rather than a mere secondary and incidental use.” If the incidental use did not “interrupt the exclusive occupation of the building for [exempt purposes] then it could be said that the entire use was exclusively for exempt purposes.” *State ex rel. Spillers v. Johnston*, 214 Mo. 656, 663 113 S.W. 1083, 1085 (1908).





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In the case of *Barnes Hospital v. Leggett*, 589 S.W.2d 241 (Mo. banc 1979), (*Barnes #1*) the Missouri Supreme Court abandoned both of these rules and approved a partial exemption rule. The Court stated as follows at page 244:

We hold that Mo. Const. Art. X, Section 6 and Section 137.100 RSMo 1986, which exempt from taxation property “used exclusively...for purposes purely charitable”, authorize a partial exemption of a building or tract, where that building or tract is used in part for charitable purposes and in part for noncharitable purposes.

Having abandoned the “all-or-nothing” rule of *Wyman* and the “dovetails into or rounds out” rule of *Spillers*, it remains for us to determine the point of departure from precedent. Feeling that justice will best be served by prospective application of the decision announced today, we hold that the new rule shall apply to this case and to all assessments which commence on the first day of January 1980, and thereafter.

In *Barnes #1, supra*, Barnes Hospital, a not-for-profit corporation, sought to enjoin the Collector of the City of St. Louis from levying a tax on Queeny Tower for the year 1978. Queeny Tower is one of a number of buildings comprising the Barnes Hospital complex. It contains laboratories, patient care rooms, and other hospital facilities. A substantial portion of the space is leased by Barnes to the Washington University Medical School. The rent charged the medical school in the relevant tax year constituted less than 0.5 percent of the total cost of patient care. The medical school also subleases a portion of this area to physicians on its part-time faculty so that they may carry on private practices.

The Circuit Court found in favor of Barnes and enjoined tax assessment or its collection on Queeny Tower. After enunciating the new partial exemption rule, the Missouri Supreme Court reversed this judgment and remanded the cause of hearing, if necessary, and directed the Circuit Court to enter a judgment enjoining assessment of those portions of Queeny Tower which satisfied the *Franciscan* test.

Accordingly, the Circuit Court applied the *Franciscan* requirements and ordered the Collector of Revenue and the Assessor of the City of St. Louis “to assess 16.6 percent of the building of the Barnes property, representing the portion of those buildings occupied by part-time faculty members engaged in the private practice of medicine.”



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The Eastern District eventually found the entire property to be exempt. While the first *Barnes* case established the possibility of partial exemption, the second *Barnes* case declined to find a partial exemption, preferring to find the entire property exempt.

Since the *Barnes* decisions the State Tax Commission has relied on the *Barnes #1* decision to find that property associated with various medical facilities as taxable in spite of the exempt status of the respective hospitals. (*DePaul Health Center v. Zimmerman*, STC Appeal Number 85-32638 (1988), 1988 WL 152976, (vacant land owned by hospital not exempt); *Carondelet Health Corporation v. Kelley*, STC Appeal Number 88-30185 (1989), 1989 WL 96153, (vacant land owned by hospital not exempt); *SSM Health Care v. Morton*, STC Appeal Number 88-11778 (January 18, 1991), 1991 WL 37253, (day care facilities for hospital employees not exempt). But in *Lutheran Charities Association, d/b/a Lutheran Medical Center v. Giles*, STC Appeal Number 1980-3005 (1983), 1983 WL 15710, the Commission found that the subject property was partially exempt.

It is interesting to note that the one case since *Barnes* which was decided by the Missouri Supreme Court found that the entire property was exempt. In *United Cerebral Palsy Association v. Ross*, 789 S.W.2d 798 (Mo. banc 1990), the subject property was an office building owned by the United Cerebral Palsy Association (UCPA). UCPA leased approximately one-fourth of the space to other charitable organizations. The Court found the entire property to be exempt, noting that the lease arrangement was one of convenience and was not intended to be a profit-making venture.

It seems that when the *Barnes*-type cases actually reach the courts, the courts are very reluctant to grant a partial exemption, preferring instead to find some reason to make the entire property exempt, i.e., the old “rounds out and dovetail” approach. At the local level, however, *Barnes* can be a valuable precedent for granting a partial exemption. As the need for new financial resources continues to grow, assessors will rely on *Barnes* to grant exemptions when warranted while taxing all property which is not being used exclusively for exempt purposes.



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## **6. MISCELLANEOUS EXEMPTIONS**

### **A. FRATERNAL AND VETERANS' ORGANIZATIONS (SECTION 137.101 RSMo)**

Section 137.101 RSMo, became effective on June 20, 1986. The statute reads as follows:

137.101. 1. The activities of nationally affiliated fraternal, benevolent, or service organizations which promote good citizenship, humanitarian activities, or improve the physical, mental, and moral condition of an indefinite number of people are purposes purely charitable within the meaning of subsection 1 of Section 6 of article X of the constitution and local assessing authorities may exempt such portion of the real and personal property of such organizations as the assessing authority may determine is utilized in purposes purely charitable from the assessment, levy, and collection of taxes.

2. If, at any time, an assessor finally determines, after any and all hearings or rightful appeals, that personal property, upon which an organization would otherwise owe taxes but for the provisions of subsection 1 of this Section or subdivision (5) of Section 137.100, is not used for purposes purely charitable, or for purposes described in subdivision (5) of Section 137.100, then the assessor shall notify the department of revenue of such final determination within thirty days.

Under the statute, parks, athletic fields, etc., owned by fraternal organizations will properly be exempt if the facilities are made available to the public free of charge. Social and meeting halls may or may not be exempt depending on their use. Assessors will have to determine the use of these facilities on a parcel-by-parcel basis. The fact that a particular parcel is owned by one of the enumerated organizations does not automatically entitle it to an exemption under Section 137.101 RSMo.

In 2007, Section 137.101 RSMo, was amended to remove veterans' organizations from the list of organizations and a new subsection was added to Section 137.100 RSMo, and exempts property



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belonging to such organizations with the following language:

All property, real and personal, belonging to veterans' organizations. As used in this Section, "veterans' organization" means any organization of veterans with a congressional charter, that is incorporated in this state, and that is exempt from taxation under Section 501(c)(19) of the Internal Revenue Code of 1986, as amended.

**B. BANK PERSONAL PROPERTY (SECTION 141.110 RSMo; ARTICLE X, SECTION 4 CONSTITUTION OF MISSOURI 1945)**

Section 4(C) of Article X of the Missouri Constitution states:

Section 4 (C) Assessment, levy, collection and distribution of tax on intangibles. All taxes on property in class 3 [intangible personal property] and its subclasses, and the tax under any other form of taxation substituted by the general assembly for the tax on bank shares, shall be assessed, levied and collected by the state and returned as provided by law, less two percent for collection, to the counties and other political subdivisions of their origin, in proportion to the respective local rates of levy.

Section 148.110 RSMo, implements this constitutional provision. It states:

148.110. Tax in lieu of other taxes.--It is the purpose and intent of the general assembly to substitute the tax provided by Sections 148.010 to 148.110 for the tax on bank shares which was imposed by Section 10959 RSMo 1939, and for all taxes on all tangible and intangible personal property of all banking institutions subject to the provisions of Sections 148.010 to 148.110, except taxes on tangible personal property owned by the taxpayer and held for lease or rental to others and for all property taxes on the shares of such banking institutions.

In 1986, the Supreme Court decided the case of *Arsenal Credit Union v. Giles*, 715 S.W.2d 918 (Mo. banc 1986). This was a declaratory judgment action to determine the constitutionality of Section



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148.620.3 RSMo, which purported to extend the Section 148.110 RSMo, “in lieu of” exemption to the personal property of credit unions and savings and loan associations. The Court held that Section 148.620.3 RSMo, was unconstitutional because Article X, Section 4(C) of the Missouri Constitution applies only to bank shares.

The next logical step was taken in *Mercantile Bank National Association v. Berra*, 796 S.W.2d 22 (Mo. banc 1990), when the Court held that Section 148.110 RSMo, is constitutional. Article X, Section 4(C) of the Missouri Constitution contemplates such a tax in lieu of taxes on bank shares. The bank tax does not violate the uniformity clause (Article X, Section 4 (a)) because it is not a property tax.

These two cases indicate that the personal property of banks, which is not being leased to others, is exempt from taxation, but the personal property of credit unions and savings and loans is not exempt from property taxation. In 2002, Section 148.020 RSMo, was amended and subsection 148.020.5 RSMo, now reads:

The term "lease or rental of tangible personal property" means the lease or rental of tangible personal property under the exclusive control of the lessee and neither attached to nor functionally a part of a taxpayer's building or buildings or any part thereof.

Consequently, safe deposit boxes may not be taxed as property leased to others.

### **C. MERCHANTS’ AND MANUFACTURERS’ INVENTORY (ARTICLE X, SECTION 6, CONSTITUTION OF MISSOURI)**

In conjunction with statewide reassessment which took place in 1985, the people of Missouri passed a constitutional provision which exempted the inventory of merchants and manufacturers.

Section 137.018 RSMo, (2015) sets forth that all merchandise which will be ultimately sold, whether or not it is subject to a rental agreement, is inventory and therefore exempt from property taxes. The Section also provides that certain rental equipment is included within the term “merchandise.”

Merchandise includes items of short term rental under NAICS codes 532412 and 532210. Short term rental is defined as rented for a period less than 365 days, or for an



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undefined period, or for an open ended period of time.

NAICS 532412 – This industry comprises of establishments primarily engaged in renting or leasing heavy equipment without operators that may be used for construction, mining, or forestry, such as bulldozers, earthmoving equipment, well drilling machinery and equipment, or cranes.

NAICS 532210 – This industry comprises establishments primarily engaged in renting consumer electronics equipment and appliances, such as televisions, stereos and refrigerators. Included in this industry are appliance rental centers.

In 1986, the State Tax Commission decided several cases dealing with the inventory exemption. These appeals were lodged before rental equipment under NAICS 532412 and 532210 were included in the term merchandise.

In *Beagle's Rental Center v. Quick*, STC Appeals Number 85-32016 and 85-32017 (1986), 1986 WL 23250, the subject property included property for lease only, property for sale or lease, and property for sale only. The Commission found that the property held for lease only was not “inventory,” and that the property was taxable. The property which was for sale or lease or for sale only was inventory, and exempt from taxation.

It is the Commission's position that in a lease purchase situation, once the property leaves the store, regardless if it has been leased or purchased, it can no longer be inventory for resale. If it is leased, it is rental property and an assessment can be made against the lessor or the lessee. If it is purchased, it is no longer inventory and an assessment should be made against the purchaser.

In *Central Electric Power Cooperative v. Smith*, STC Appeal Number 85-39000 (1987), 1987 WL 51266, the issue was whether a coal pile, which was used as fuel by the power cooperative, was exempt merchants'/manufacturers' inventory, or taxable business personal property. The State Tax Commission found that the coal pile was not inventory, but was taxable as business personal property.

In *Midwest Aerials & Equipment, Inc. v. King*, STC Appeal number 00-20002, 2001 WL 1182813,



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the Commission added a fourth prong to the test--that property must also be available for sale to be exempt inventory. In that case the evidence was that at any given time, only 20% of the property was in the store and available for sale. The Commission held that because 20% of the equipment of the rental company was available for sale at any given time, 20% of the value of the equipment was exempt from property tax, but that the remaining equipment (80%) was taxable.

#### **D. UNITED STATES' PROPERTY (ARTICLE III, SECTION 43, CONSTITUTION OF MISSOURI)**

Property belonging to the United States government is not taxable by the various states. Technically, this property is not exempt from state taxation, but is immune from taxation. For all intents and purposes the results are the same. The property is not taxable in Missouri.

Article X, Section 43 of the Missouri Constitution states that no tax shall be imposed on lands belonging to the United States. This tax limitation has been expanded pursuant to the supremacy clause of the United States Constitution to include other types of federal property.

In 1988, the State Tax Commission decided two cases which dealt with federal personal property. The case of *Rockwell International Corporation v. Stanton*, STC Appeals Number 86-45006 and 87-45001 (1988), 1988 WL 464224, dealt with milling machines used to manufacture United States

military equipment. The State Tax Commission found that the United States government was the owner of the property. The subject was not taxable by Missouri.

*Libby Corporation v. Kelley*, STC Appeals Number 85-30956 and 85-30957 (1988), 1988 WL 153112, also concerned manufacturing equipment. The Commission found that the equipment in this case was owned by Libby, not the United States government. It was taxable in Missouri although it was used to the benefit of the United States Department of Defense.

The *Rockwell* case, noted above, was decided in reliance on *United States v. Jackson County, Missouri*, 696 F.Supp. 479 (Mo. App. W.D. 1988). In the federal court case, Bendix Corporation managed and operated a weapon manufacturing facility for the United States Department of Defense. The Court found that the United States was the owner of all the real and tangible personal property



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at the facility. The property was, therefore, immune to state taxation.

The main issue in these cases is the ownership of the subject property. If it is owned by the United States government, the property is not taxable by Missouri. If the government continues to expand into the private arena, the tax immunity issue may become more prevalent in Missouri property tax cases.

#### **E. REAL PROPERTY OF FORMER PRISONERS OF WAR (POWs) WHO ARE 100% DISABLED BY A SERVICE-RELATED DISABILITY**

Article X, Section 6 of the Missouri Constitution reads:

All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries, and all real property used as a homestead as defined by law of any citizen of this state who is a former prisoner of war, as defined by law, and who has a total service-connected disability, shall be exempt from taxation...

While other provisions of this Section indicate that the general assembly “may” exempt property by general law, this particular provision mandates the exemption without requiring any action of the general assembly.

Until further clarification is forthcoming from the General Assembly, assessors should interpret the provision, which originated from a joint resolution, to ascertain the intent of the legislature from the words that are used. *United Pharmacal Co. of Mo., Inc. v. Mo. Bd. of Pharmacy*, 208 S.W.3d 907, 909 (Mo. banc 2006). “This goal is achieved by giving the language used its plain and ordinary meaning.” *Id.* at 909. Where a word “...is not defined in the statute, its meaning is ascertained from the dictionary definition.” *Id.* at 912. Black’s Law Dictionary (7<sup>th</sup> Ed.) defines “homestead” as “The house, outbuildings and adjoining land owned and occupied by a person or family as a residence.” The Commission advises that if the “homestead” is part of a farm, only the residential property should be exempted.

Consequently, to qualify, the applicant for such an exemption must 1) be a former prisoner of war and 2) a veteran of any branch of the armed forces of the United States or this state who became one hundred percent disabled as a result of his or her military service, and must 3) own and occupy the homestead as a primary residence.





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The exemption applies only to real property and does not apply to property owned separately by the spouse of a qualifying applicant or to the widow or widower of such applicant.

#### PROOF REQUIRED

County records should demonstrate that the applicant is the owner of the homestead. The applicant for this exemption should provide the assessor with the following evidence:

1. Documents or sworn affirmation that the applicant occupies the homestead as his or her primary residence;
2. A letter from the United States Government or United States Department of Veterans Affairs as proof of service-connected total disability; AND
3. (a) Form DD 214 (Discharge Certificate) showing Ex-Prisoner of War Status;

#### OR

(b) A letter from the Military Personnel Records Center [also known as National Archives and Records Administration (NARA)] or the United States Department of Veteran Affairs indicating that the applicant is former prisoner of war.

## 2.5 THE APPEAL PROCESS

The property tax appeal process has four basic stages listed below. This chapter will address the stages in the order they occur. Of course, an appeal may be settled or dismissed at any of the stages.

- A. **Informal Hearings**--The assessor and the taxpayer meet informally and attempt to understand each other's arguments and come to an agreement, if possible.
- B. **Board of Equalization**--The parties present their case to the local board that decides whether to change the assessor's assessment.
- C. **State Tax Commission**--The parties present their case to a hearing officer of the Commission where a formal record is made.
- D. **Judicial Review**--A party appeals to circuit court (then to appellate or Missouri Supreme



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Court) to review the decision of the Commission based upon the record made before the Commission.

#### **1. Informal Hearings**

At any point after the assessment is made, the assessor may meet with taxpayers who have a complaint about the assessment. The purpose of this meeting is for the assessor and the taxpayer to communicate and understand the other's point of view. Probably the vast majority of complaints are resolved at this stage either because the assessor fine tunes the assessment due to the additional factors supplied by the taxpayer, or the taxpayer, after hearing the assessor's explanation of the assessment, drops the complaint.

The assessor may change the assessment before the assessor turns over the books to the clerk. If the books are in control of the clerk, a stipulation by the taxpayer and the assessor, or a recommendation by the assessor, must be presented to the board of equalization. The board may then order the change if it deems it to be appropriate.

If the matter cannot be resolved by the informal hearing process, the taxpayer has a right to appeal to the board of equalization.

#### **2. The Board of Equalization**

##### **A. Second, Third, and Fourth Class Counties**

Any person who thinks himself or herself aggrieved by the assessment of property may appeal to the county board of equalization (hereafter referred to as the board) in person, by attorney or agent, or in writing. Such appeals shall be lodged with the county board of equalization on or before the second Monday in July (Sections 137.275, 137.385, and 138.180), unless the board extends that deadline. The appeal should be filed with the county clerk. "Person" may include a corporation, partnership, or other legal entity.

A taxpayer may be self-represented or represented by an attorney, a tax representative, a relative, or



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anyone else who wishes to appear on his or her behalf. The taxpayer may appeal only in writing and never appear before the board. If the board receives such a written appeal and the taxpayer does not appear, the appeal should not be dismissed but the matter should be considered and an order issued in the same fashion as orders for other appeals.

Any person may appeal in person, by attorney or agent, or in writing on or before the second Monday in July. The board meets in the county clerk's office on the third Monday in July except it may start meeting after July 1 if it finds it is necessary in order to hear all the cases resulting from an evaluation made during a general reassessment year, in other words, an odd-numbered year. Appeal hearings should end July 31 of each year.

The board is comprised six voting members who are the county commissioners, the surveyor, and two additional members, appointed by the county commissioners, who are citizens of the county, not officers of the county, not related to any member of the county board of equalization within the third degree of consanguinity, and who shall have some level of experience as a real estate broker, real estate appraiser, home builder, property developer, lending officer, or investor in real estate before such member's appointment to the board. Two additional non-voting members are the county clerk, who serves as secretary to the board, and the assessor. The assessor, or a member of the assessor's staff, shall be present at all board of equalization hearings, and shall have the right to present evidence pertaining to any assessment matter before the board.

Board members who are otherwise compensated by salary are not entitled to additional compensation. The county surveyor and the appointed board members should receive compensation as agreed upon by the county commission. A majority of the board constitutes a quorum and a majority of the members present can determine all matters of appeal or revision.

The primary function of the board is to hear all complaints and equalize the valuation and assessment of all real and tangible personal property at its true value. If property is undervalued, the board must raise the value of the property to market value and then give notice by personal service, mail, or publication to the owner/holder of the property specifying the property and the amount of the raise. The board must meet the third Monday in July to hear any reason why the valuation should not be raised. This July meeting is commonly referred to as the "board of appeals," although it is never so designated in the statutes. Note that in *Walter-Kroenke Properties v. State Tax Commission*, 742



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S.W.2d 242 (Mo. App. 1987), the court upheld the board's authority to raise values upon the complaint of a third party which, in that case, was a school superintendent.

Beginning with the 2021 reassessment cycle, in any county, if the assessed valuation of any property increased more than 15% from the previous assessment, unless the increase is due to new construction or improvement, the assessor shall have the burden to prove that the assessor's valuation does not exceed the true market value of the subject property. In any county, if a physical inspection of the subject property is required by subsection 10 of section 137.115, the assessor shall have the burden to establish the manner in which the physical inspection was performed and shall have the burden to prove that the physical inspection was performed in accordance with section 137.115. In any county, in the event the assessor fails to provide sufficient evidence to establish that the physical inspection was performed in accordance with section 137.115, the property owner shall prevail on the appeal as a matter of law.

(This provision, by its plain and ordinary meaning, applies to appeals before the board of equalization and not to appeals before the State Tax Commission.)

The board must also reduce the value of any property which is appraised above its true value. There is no presumption that the assessor's valuation is correct.

The State Tax Commission requires that a copy of the board order accompany appeals to the Commission. The taxpayer has a right to appeal to the Commission by September 30th or 30 days after the final action of the board. Therefore, it is extremely important that the board mail a copy of the order to the taxpayer. The board should provide enough detail to inform the State Tax Commission of the action of the board in the event the taxpayer appeals to the State Tax Commission. Those details should include:

1. The name and address of the taxpayer.
2. The address and parcel/locator number of the subject property.
3. Classification of the property.
4. Appraised and assessed values placed upon the property by both the assessor and the board.
5. The date of mailing of the board decision to the taxpayer.

Upon request, the State Tax Commission will provide recommended decision forms designed to



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supply the information listed above.

#### **B. Non-Charter First Class Counties**

Any person aggrieved by the assessment of his or her property may appeal to the board of equalization (hereafter referred to as the board) on forms furnished by the county clerk. "Person" may include a corporation, partnership, or other legal entity. Appeals must be filed on or before the second Monday in July unless the board extends the time for filing.

The board may operate with membership like the second, third, and fourth counties described above, or the county commission may appoint three taxpaying property-owning citizens who have been residents of the county for five years preceding their appointment. Board members compensation is fixed by the county commission. A majority of the board constitutes a quorum.

The board meets on the third Monday of July each year except that the board may begin meeting after July 1 if it feels it is necessary in order to hear all the cases resulting from an evaluation made during a year of reassessment, in other words, an odd-numbered year. There is no presumption that the assessor's valuation is correct. Appeal hearings should end July 31 of each year. The board continues to meet once a month for the purpose of hearing allegations of erroneous assessments, double assessment, and clerical errors.

Beginning with the 2021 reassessment cycle, in any county, if the assessed valuation of any property increased more than 15% from the previous assessment, unless the increase is due to new construction or improvement, the assessor shall have the burden to prove that the assessor's valuation does not exceed the true market value of the subject property. In any county, if a physical inspection of the subject property is required by subsection 10 of section 137.115, the assessor shall have the burden to establish the manner in which the physical inspection was performed and shall have the burden to prove that the physical inspection was performed in accordance with section 137.115. In any county, in the event the assessor fails to provide sufficient evidence to establish that the physical inspection was performed in accordance with section 137.115, the property owner shall prevail on the appeal as a matter of law.

(This provision, by its plain and ordinary meaning, applies to appeals before the board of



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equalization and not to appeals before the State Tax Commission.)

For a discussion of the function of the board and notice to taxpayers, see number 2.5.2A. above.

#### **C. St. Louis City**

Any person may appeal in writing to the board of equalization from the assessment of his or her property, which appeal shall specify the matter of which he or she complains. Such appeals should be filed with the assessor before the second Monday in July.

The board is made up of the assessor, who is president of the board, and four taxpaying, property-owning citizens who have resided in the city at least five years immediately prior to their appointment. Board members are to be appointed before the second Monday in May of each year. Compensation is fixed by ordinance and vacancies are filled by appointment by the mayor.

The board shall meet on the third Monday in July except that the board may begin meeting after July 1 if it feels it is necessary in order to hear all the cases resulting from an evaluation made during a year of reassessment, in other words, an odd-numbered year. Appeal hearings should end the fourth Saturday in August.

The board is to hear complaints and appeals, adjust, correct, and equalize the valuations and assessments of any real or tangible personal property taxable by the city. There is no presumption that the assessor's valuation is correct. If the board raises any assessment, it must give notice to the taxpayer by personal service, mail, or, if the address of the taxpayer or his or her representative is unknown, by publication. The notice must name the time and place, not less than five days thereafter, when and where the person may appear before the board and show cause, if any, why the assessment should not be made.

#### **D. Charter First Class Counties**

These counties have the authority to create their own procedures so long as they do not conflict with the general statutes governing boards of equalization. Pursuant to Section 138.100.3 RSMo, the St.



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Louis County Board of Equalization must provide taxpayers who appeal written findings of fact and a written basis for the decision.

### 3. State Tax Commission

#### A. Filing the Complaint

The taxpayer has a right to appeal the decision of the county board of equalization to the State Tax Commission (hereafter referred to as the Commission). Taxpayers may appeal directly to the circuit court without first appealing to the Commission if the appeal pertains only to an exemption issue. Taxpayers may not appeal to the Commission unless they have first appealed to the local board of equalization, except, the taxpayer may appeal directly to the Commission if:

- The assessor failed to send notice to the taxpayer of a new or increased assessment. In such case, the taxpayer must appeal within the later of 30 days after receiving notice (usually the tax bill) or on or before December 31 of the tax year. The taxpayer also must pay under protest because notification of appeal by the Commission to the Collector most likely would not come in time to impound the funds. See, 12 CSR 30-3.010(1)(B).
- A new owner acquires the property 30 days or less before the deadline for appealing to the board or later in the tax year, the new owner may appeal directly to the State Tax Commission. The appeal must be filed within 30 days after the tax statement/tax bill is sent, or the assessment is otherwise first communicated, or December 31, whichever is later. See, 12 CSR 30-3.010(1)(B).
- If actions of the county made it impossible for the taxpayer to appeal to the local board. See *Lake St. Louis v. State Tax Commission*, 759 S.W.2d 843 (Mo.1988).

The assessor has no right to appeal the decision of the board. *O'Flaherty v. State Tax Commission*, 698 S.W.2d 2 (Mo 1985).

In all counties, appeals must be filed by September 30 or 30 days after the final action of the board,



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whichever is later. Appeals must be filed on Commission forms. Appeals are considered filed on the day they are postmarked or, if metered mail, on the date of post office cancellation. Otherwise, appeals are considered filed upon the day they are actually received at the Commission. There is no fee for filing an appeal with the Commission.

Appeals may be filed for any number of the following reasons:

1. Overvaluation
2. Misclassification
3. Misgraded agricultural land
4. Discrimination
5. Exemption

### **B. The Two-Year Cycle**

Because Missouri assesses on a two-year cycle, a decision in an appeal in the odd-numbered year (the year of reassessment) applies to the following even-numbered year as well unless there has been new construction and improvements between January 1 of the odd-numbered year and January 1 of the even-numbered year.

In most cases, a taxpayer can appeal in an even-numbered year if he or she has not appealed the previous year.

### **C. Representation**

An individual taxpayer may represent himself or herself or be represented by an attorney. A corporation, partnership, limited liability company, trust, estate, or other legal entity must be represented by an attorney. An assessor, by Commission rule, may represent himself or herself, or may be represented by the prosecutor, county counselor, or other attorney. The Commission will notify the assessor of appeal dates and other orders of the Commission.





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#### **D. Evidence**

The Commission hearing is extremely important in the appeal process. The Commission has no file containing the evidence presented to the board. The Commission conducts a "de novo" hearing; that is, the Commission hears the evidence anew as if it had not been heard previously. Additionally, **all subsequent review will be based upon the record (transcript and exhibits) made at the Commission hearing.**

Therefore, it is essential that the assessor, with the assistance of their counsel, organize and present the evidence as clearly and thoroughly as possible.

If valuation is the issue, the assessor should not rest upon the mass appraisal to prove the case. A mass appraisal by its definition paints with a broad brush. The assessor should appraise the subject property specifically using the appropriate approaches to value in a narrative appraisal report, if possible.

#### **E. Procedure**

Missouri Statutes, Missouri Court Rules, and State Tax Commission Rules 12 CSR 30-3.001 et seq. should be consulted regarding appeal procedure. Further, it is extremely important that the assessor and his or her legal representative **carefully review and comply with Commission correspondence and orders regarding appeals.** Failure to adhere to the procedures outlined in such documents could lead to preclusion of evidence at hearing and, as a consequence, an adverse ruling. Conversely, if the procedures in the correspondence and orders are followed, they will guide the assessor through the process.

The legal staff at the Commission will answer any questions regarding procedure. However, it is a breach of ethics for the hearing officers or legal staff to discuss the merits of a pending case without the presence or permission of the other party. Such a discussion is called "ex parte communications" and can expose a hearing officer to sanctions by the Missouri Bar.

### **Statutes, Administrative Rules, and Court Rules Applicable to STC Appeals**



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**138.360. Issuance of subpoenas — fees — costs.** — 1. The commission may subpoena witnesses. All subpoenas shall be signed and issued by a commissioner or by the secretary of the commission, and shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record or by any person of full age designated for that purpose by the commission or by a commissioner.

2. The person executing any such process shall receive the fees now prescribed by law for similar services in civil cases in the circuit courts in this state, and shall be paid in the same manner as provided herein for the payment of the fees of the witnesses.

3. Each witness who shall appear before the commission or a commissioner by its or his order, shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in the circuit courts of this state, which shall be audited and paid by the state in the same manner as other expenses of the commission are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the commission.

4. Whenever a subpoena is issued at the instance of a complainant, respondent, or other party to any proceeding before the commission, the cost of service thereof and the fee of the witness shall be borne by the party at whose instance the witness is summoned.

5. Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission or commissioner, as directed in the subpoena. No witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation.

**138.370. Examination of witnesses and books.** — 1. The commission shall have power to examine witnesses under oath. Any member of the commission is hereby empowered to administer oaths.

2. The commission, or any member, or authorized representative thereof, shall have the right to examine books, papers or accounts of any corporation, firm or individual owning property liable for assessment for taxation, general or specific, under the laws of this state.

**138.430. Right to appeal, procedure, notice to collector, when — investigation — costs and attorney's fees awarded, when.** — 1. Every owner of real property or tangible personal property shall have the right to appeal from the local boards of equalization to the state tax commission under rules prescribed by the state tax commission, within the time prescribed in this chapter or thirty days following the final action of the local board of equalization, whichever date



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later occurs, concerning all questions and disputes involving the assessment against such property, the correct valuation to be placed on such property, the method or formula used in determining the valuation of such property, or the assignment of a discriminatory assessment to such property. The commission shall investigate all such appeals and shall correct any assessment or valuation which is shown to be unlawful, unfair, improper, arbitrary or capricious. Any person aggrieved by the decision of the commission may seek review as provided in chapter 536.

2. In order to investigate such appeals, the commission may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property. The commission may make its decision regarding the assessment or valuation of the property based solely upon its inquiry and any evidence presented by the parties to the commission, or based solely upon evidence presented by the parties to the commission.

3. Every owner of real property or tangible personal property shall have the right to appeal to the circuit court of the county in which the collector maintains his office from the decision of the local board of equalization not later than thirty days after the final decision of the board of equalization concerning all questions and disputes involving the exclusion or exemption of such property from assessment or from the tax rolls pursuant to the Constitution of the United States or the constitution or laws of this state, or of the taxable situs of such property. The appeal shall be as a trial de novo in the manner prescribed for nonjury civil proceedings. Upon the timely filing of the appeal, the clerk of the circuit court shall send to the county collector to whom the taxes on the property involved would be due a notice that an appeal seeking exemption has been filed, which notice shall contain the name of the taxpayer, the case number assigned by the court, and the parcel or locator number of the property being appealed. The notice to the collector shall state that the taxes in dispute are to be impounded in accordance with subsection 2 of Section 139.031.

4. Upon the timely filing of an appeal to the state tax commission as provided in this Section, or the transfer of an appeal to the commission in accordance with subsection 5 of this Section, the commission shall send to the county collector to whom the taxes on the property involved would be due a notice that an appeal has been filed or transferred as the case may be, which notice shall contain the name of the taxpayer filing the appeal, the appeal number assigned by the commission, the parcel or locator number of the property being appealed, the assessed value by the board of equalization and the assessed value proposed by the taxpayer, if such values have been provided to the commission when the appeal is filed. The notice to the collector shall state that the taxes in dispute are to be impounded in accordance with subsection 2 of Section 139.031. Notice to the collector of an appeal filed in an odd-numbered year shall also serve as notice to the collector to impound taxes for the following even-numbered year if no decision has been rendered in the appeal. The state tax commission shall notify the collector once a decision has been rendered in an appeal.



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5. If the circuit court, after review of the appeal, finds that the appeal is not a proper subject for the appeal to the circuit court as provided in subsection 3 of this Section, it shall transfer the appeal to the state tax commission for consideration.

6. If an assessor classifies real property under a classification that is contrary to or in conflict with a determination by the state tax commission or a court of competent jurisdiction of said property, the taxpayer shall be awarded costs of appeal and reasonable attorney's fees on a challenge of the assessor's determination.

**138.431. Hearing officers of tax commission to hear appeals, when, procedure — appeal of hearing officer's decision, how.** — 1. To hear and decide appeals pursuant to Section 138.430, the commission shall appoint one or more hearing officers. The hearing officers shall be subject to supervision by the commission. No person shall participate on behalf of the commission in any case in which such person is an interested party.

2. The commission may assign such appeals as it deems fit to a hearing officer for disposition.

(1) The assignment shall be deemed made when any scheduling order is first issued by the commission, however, if no scheduling order has been issued, then a hearing officer shall be assigned no later than sixty days after the appeal is filed by the taxpayer.

(2) A change of hearing officer, or a reservation of the appeal for disposition as described in subsection 3 of this Section, shall be ordered by the commission in any appeal upon the timely filing of a written application by a party to disqualify the hearing officer assigned. The application shall be filed within thirty days from the assignment of any appeal to a hearing officer and need not allege or prove any cause for such change and need not be verified. No more than one change of hearing officer shall be allowed for each party in any appeal.

3. The commission may, in its discretion, reserve such appeals as it deems fit to be heard and decided by the full commission, a quorum thereof, or any commissioner, subject to the provisions of Section 138.240, and, in such case, the decision shall be final, subject to judicial review in the manner provided in subsection 4 of Section 138.470.

4. The manner in which appeals shall be presented and the conduct of hearings shall be made in accordance with rules prescribed by the commission for determining the rights of the parties; provided that, the commission, with the consent of all the parties, may refer an appeal to mediation. The commission shall promulgate regulations for mediation pursuant to this Section. No regulation or portion of a regulation promulgated pursuant to the authority of this Section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536. There shall be no presumption that the assessor's valuation is correct. A full and



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complete record shall be kept of all proceedings. All testimony at any hearing shall be recorded but need not be transcribed unless the matter is further appealed.

5. Unless an appeal is voluntarily dismissed, a hearing officer, after affording the parties reasonable opportunity for fair hearing, shall issue a decision and order affirming, modifying, or reversing the determination of the board of equalization, and correcting any assessment which is unlawful, unfair, improper, arbitrary, or capricious. The commission may, prior to the decision being rendered, transfer to another hearing officer the proceedings on an appeal determination before a hearing officer. The complainant, respondent-assessor, or other party shall be duly notified of a hearing officer's decision and order, together with findings of fact and conclusions of law. Appeals from decisions of hearing officers shall be made pursuant to Section 138.432.

6. All decisions issued pursuant to this Section or Section [138.432](#) by the commission or any of its duly assigned hearing officers shall be issued no later than sixty days after the hearing on the matter to be decided is held or the date on which the last party involved in such matter files his or her brief, whichever event later occurs.

**138.432. Decisions and orders of hearing officers, appeal of, procedure — when deemed final.** — A complainant, respondent-assessor, or other party subject to a decision and order of a hearing officer, may file with the commission, within thirty days following the date of notification or mailing of such decision and order, an application to have such decision and order reviewed by the commission. Such application shall contain specific detailed grounds upon which it is claimed the decision is erroneous. The commission may summarily allow or deny an application for review. If an application is allowed, the commission may affirm, modify, reverse, or set aside the decision and order of the hearing officer on the basis of the evidence previously submitted in such case, may take additional evidence, or may remand the matter to the hearing officer with directions. Any additional hearing shall be conducted in accordance with the requirements of subsection 3 of Section 138.431. The commission shall promptly notify the parties of its decision and order, together with its findings of fact and conclusions of law. The decision of the commission shall be subject to judicial review in the manner provided by subsection 4 of Section 138.470. If an application for review is denied, the decision and order of the hearing officer shall be deemed to be the final decision of the commission for the purpose of judicial review and shall be subject to the judicial review within the time and in the manner provided for with respect to decisions of the commission pursuant to subsection 4 of Section 138.470; except that, the time limitations shall run from the date of notice or mailing of the order of the commission denying the application for review.

**138.433. Pleadings, when deemed filed.** — In determining whether pleadings are filed within the time allowed by law, such pleadings may be transmitted to the state tax commission by registered mail. Pleadings so filed shall be deemed filed with the commission as of the date



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deposited with the United States Postal Service as shown by the record of such mailing.

**138.434. Attorney fees and other costs awarded taxpayers on appeal in charter counties, St. Louis City, certain railroad and subclass three property, when.** — Any first class charter county or a city not within a county may require by ordinance or charter the reimbursement to a taxpayer for the amount of just and reasonable appraisal costs, attorney fees and court costs resulting from an evidentiary hearing before the state tax commission or a court of competent jurisdiction if such appeal results in a final decision reducing the appraised value of residential property by at least fifteen percent or the appraised value of utility, industrial railroad and other subclass three property by at least twenty-five percent from the appraised value determined by the board of equalization for that tax year. The commission or court awarding such fees and costs shall consider the reasonableness of the fees and costs within the context of the particular case. Such fees and costs shall not exceed one thousand dollars for a residential property appeal. Such fees and costs for utility, industrial railroad or other subclass three property appeals shall not exceed the lesser of four thousand dollars or twenty-five percent of the tax savings resulting from the appeal. The provisions of this Section shall only apply to the first contested year when cases are tried on a consolidated basis.

### Administrative Rules

#### 12 CSR 30-3.001 Two-Year Assessment Cycle

*PURPOSE: This rule establishes the method assessors shall use to determine assessed value of real property under the two-year assessment cycle.*

(1) The assessed value of real property shall be calculated by determining its true value in money on January 1 of each odd-numbered year. The value shall remain the same for the subsequent even-numbered year unless there has been new construction or property improvements between January 1 of the odd-numbered year and January 1 of the following even-numbered year.

(2) In those instances in which new construction or property improvements have occurred between January 1 of an odd-numbered year and January 1 of an even-numbered year, the true value in money of the property as newly constructed or improved shall be determined as of January 1 of the odd-numbered year.

(A) The valuation of the property shall take into consideration the new construction or property improvements and shall assign to that new construction or property improvements the value



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which would have been attributed to new construction or improvements on January 1 of the odd-numbered year as though they had existed on that date.

#### (B) Examples.

1. On January 1, 1991, the subject property is a five (5)-acre vacant lot. On December 1, 1991, construction of a strip shopping center is completed. For the 1992 tax year, the assessed value is calculated by determining the true value in money of a shopping center of the same size, construction, location and use as the subject property as of January 1, 1991, and multiplying that amount by the appropriate statutory assessed value percentage.
2. On January 1, 1991, the subject property is a three (3)-bedroom ranch style house with thirteen hundred (1300) square feet. On August 1, 1991, the addition of a second story and seven hundred (700) square feet is completed. For the 1992 tax year, the assessed value is calculated by determining the true value in money of a two (2)-story, two-thousand (2000) square foot residence of the same construction and location as the subject as of January 1, 1991, and multiplying that amount by the appropriate statutory assessed value percentage.

(3) A property improvement consists of any change to the physical characteristics of the property, whether that change is one that causes an increase or a reduction in value. Changes in zoning, neighborhood conditions or economic conditions which directly or indirectly affect the property will not warrant a change in the assessed value for the even-numbered year.

#### (A) Examples.

1. Assuming value is affected, a change in the assessed value for the 1992 tax year is warranted (see paragraph (2)(B)2.)
2. On January 1, 1991, the subject property is a three (3)-bedroom ranch style house with thirteen hundred (1300) square feet. On December 1, 1991, the house burns to the ground. A change in the assessed value for the 1992 tax year is warranted.
3. On January 1, 1991, the subject property is a five (5)-acre vacant lot zoned agricultural. On December 1, 1991, the property is rezoned commercial. No new construction is added to the property. A change in the assessed value for the 1992 tax year is not warranted.
4. On January 1, 1991, the subject property is a three (3)-bedroom ranch style house located on ten (10) acres of land in the rural area of the county. On December 1, 1991, the county began operation of a landfill on property adjacent to the subject property. The location and operation of the landfill negatively affect the value of the subject property. A change in the value for the 1992 tax year is not warranted.
5. On January 1, 1991, the subject property is a three (3)-bedroom ranch style house with thirteen hundred (1300) square feet which is twenty (20) years old. On January 1, 1992, the subject property is twenty-one (21) years old. It is generally recognized in the appraisal of property that as property ages it physically deteriorates and it may be necessary to make a deduction for physical depreciation under the cost approach for value. A change in value for the 1992 tax year is not warranted.



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(4) The examples used in this rule are by way of illustration only and not to be deemed to be the only instances to which this rule applies.

### **12 CSR 30-3.005 Appeals of the Assessment of Real Property to the Local Board of Equalization Under the Two-Year Assessed Value Cycle**

*PURPOSE: This rule establishes how appeals of the assessment of real property to the local boards of equalization are to be accomplished under the two-year assessed value cycle and to ensure that the commission's authority to render decisions and orders in appeals from local boards of equalization is not compromised at the local level.*

(1) Appeals to the Local Board of Equalization in Odd-Numbered Years. Appeals to the local board of equalization in odd-numbered years from assessment placed on real property by the county assessor shall be made by the aggrieved taxpayer in the manner required by law.

(2) Appeals to the Local Board of Equalization in Even-Numbered Years.

(A) If a taxpayer did not file an appeal of an assessment of real property from the local board of equalization to the State Tax Commission in the odd-numbered year, the appeal to the local board of equalization in the even-numbered year shall be made by the aggrieved taxpayer in the manner required by law.

(B) If a taxpayer did file an appeal of an assessment of real property from the local board of equalization to the State Tax Commission in the odd-numbered year, the local board of equalization shall accept as duly filed appeal of the assessment in the even-numbered year, a notice from the State Tax Commission to the county clerk that an appeal of the odd-numbered year's assessment is presently pending before the State Tax Commission. This notice shall constitute the filing of an appeal in writing to the local board of equalization on behalf of the taxpayer. The local board of equalization shall hear and decide an appeal in the same manner it would hear and decide other appeals to it. The notice filed by the State Tax Commission on behalf of the taxpayer shall be filed before April 1 of the even-numbered year.

(3) Nothing in this rule shall prevent a taxpayer from filing an appeal of the assessment of real property on his/her own behalf in the even-numbered year from dismissing an appeal before the local board of equalization filed on his/her behalf by the State Tax Commission, or from appearing and presenting evidence at a hearing on his/her appeal at the local board of equalization.

### **12 CSR 30-3.010 Appeals From the Local Board of Equalization**





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*PURPOSE: This rule informs the local taxpayer of his/her right to protest by complaint or appeal an assessed value which s/he feels is unlawful, unfair, improper, arbitrary, or capricious and the procedure for filing these complaints or appeals.*

(1) Every owner of real property or tangible personal property shall have the right to appeal from the decision of the local board of equalization, upon compliance with the following rules:

(A) This appeal shall be initiated by filing a complaint on forms prescribed by this commission and directed to the State Tax Commission. No complaint will be accepted unless on forms prescribed by this commission; provided, that any complainant may attach to commission forms any additional written pleading deemed appropriate by complainant. The complaint shall specify the name of the complainant; the business address of the complainant or an attorney to whom notice of hearing may be mailed; the legal description of the real property or the complete description of the tangible personal property at issue; a brief statement of the grounds upon which the assessment of the property is claimed to be unlawful, unfair, improper, arbitrary, or capricious; a statement that the complainant had appealed to the proper local board of equalization; a statement of the relief to which complainant may feel entitled; if required under 12 CSR 30-3.025(3), a verified statement which states facts tending to demonstrate that the commission should reconsider the appropriateness of the value in the even-numbered year; and other information as shall be requested upon the commission forms;

(B) A complaint appealing a property assessment shall be filed not later than September 30 or within thirty (30) days of the decision of the board of equalization, whichever is later.

1. In any county or the City of St. Louis, the owner may appeal directly to the State Tax Commission (a) where the assessor fails to notify the current owner of the property of an initial assessment or an increase in assessment from the previous year, prior to thirty (30) days before the deadline for filing an appeal to the board of equalization, including instances in which real property was transferred and the prior owner was notified, or (b) where a new owner purchased real property less than thirty (30) days before the deadline for filing an appeal to the board of equalization or later in the tax year, regardless if the assessment is an initial assessment, an increase or decrease in assessment, or an assessment established in the prior year. Appeals under this paragraph shall be filed within thirty (30) days after a county official mailed a tax statement or otherwise first communicated the assessment or the amount of taxes to the owner or on or before December 31 of the tax year in question, whichever is later. Proof of late notice, the date of purchase, and/or notice sent to the prior owner shall be attached to, or set forth in, the complaint.

2. A property owner who, due to lack of notice, files an appeal directly with the State Tax Commission after tax statements are mailed should pay his or her taxes under protest pursuant to the requirements of Section 139.031 RSMo, and the county collector shall upon receiving either the payment under protest or the notice specified in Section 138.430 RSMo, impound all portions of taxes which are in dispute;



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(C) Any complaint shall be served upon the State Tax Commission personally to any commissioner or to the administrative secretary of the commission, by certified, registered, regular, private carrier service mail or electronic transmission addressed to the State Tax Commission in Jefferson City. For purposes of this rule, electronic transmission shall mean facsimile transmission or email.

1. If personal service is made, it may be proven by the affidavit of any person competent to testify, or by the official certificate of any officer authorized under the laws of Missouri to execute process. In determining whether complaints personally served are filed within the time prescribed by law, the date on which personal service is obtained shall be deemed to be the date the complaint is filed with the commission.

2. In determining whether complaints are filed within the time prescribed by law, the complaints may be transmitted to the commission by registered, certified, or regular mail or by private carrier service. Complaints filed by registered or certified mail shall be deemed filed with the commission as of the date deposited with the United States Postal Service. Complaints filed by private carrier service shall be deemed filed as of the date shown by the record of the mailing. Complaints filed by regular or metered mail shall be deemed filed on the date of post office cancellation; or three (3) days before the date the commission receives the complaints if there is no dated post office cancellation.

3. In determining whether complaints filed by electronic transmission are filed within the time prescribed by law, complaints so filed shall be deemed filed with the commission as of the date the electronic transmission is received by the commission. A complaint filed by electronic transmission shall have the same effect as the filing of an original document and an electronic signature shall have the same effect as an original signature;

(D) Two (2) copies of the complaint shall be filed with the commission, one (1) copy of which will be forwarded to the assessor with notice of institution of the proceedings to review assessment; and

(E) The State Tax Commission shall set appeals for conferences and hearings in the county of assessment or in any other location in the state as the commission deems necessary for the efficient management of the appeal docket. Conferences and hearings may be conducted by electronic means where practicable.

(2) On any appeal taken to the commission from the local board of equalization, a natural person may represent him/herself in the proceedings before the commission. The county assessor, but not a deputy, may represent his/her office in such proceedings. All others must appear through an attorney licensed to practice law in Missouri or in another jurisdiction.

(A) Any person who signs a pleading or brief, or who enters an appearance at a hearing for an entity or another person, by an act expressly represents that s/he is authorized to so act and that s/he is a licensed attorney-at-law in this state or his/her state of residence.



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(B) Any attorney not licensed in this state but who is a member in good standing of the bar of any court of record may be permitted to appear and participate in a particular appeal(s) before the commission under the following conditions: The visiting attorney shall file with his/her initial pleading a receipt for his/her *pro hac vice* authorization from the clerk of the Missouri Supreme Court to appear before the commission on the designated appeal or appeals along with a statement identifying each court of which s/he is a member of the bar and certifying that neither s/he nor any member of his/her firm is disqualified from appearing in any such court. Also, the statement shall designate some member of the Missouri Bar having an office in Missouri as associate counsel. This designated attorney shall enter his/her appearance as an attorney of record.

(3) When a lawyer is a witness for his/her client, except as to merely formal matters, s/he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying before this commission in behalf of his/her client.

(4) The commission shall make arrangements to have all appeal hearings suitably recorded and preserved. Upon a motion of a party filed at least seven (7) days prior to the hearing, the commission may approve the recording and transcription of any hearing by a court reporter hired by a party provided that such party shall furnish the commission and the opposing party a copy of the transcript at no cost and the party supplying the court reporter and the court reporter agree that such transcript retained by the commission shall be available for inspection and copying by the public pursuant to Chapter 610 RSMo. The commission may adopt the resulting transcript as the official record of the proceeding.

(5) The fundamental rules of evidence will apply at hearings before the commission. (emphasis added)

(6) In computing any period of time prescribed or allowed by these rules, by order of the commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.



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(7) When by these rules or by a notice given thereunder or by order of the commission an act is required or allowed to be done at or within a specified time, the commission for cause shown may at any time in its discretion 1) with or without motion or notice order the period enlarged if request is made before the expiration of the period originally prescribed or as extended by previous order or 2) upon notice and motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but the commission may not extend the time for taking any action under rules 12 CSR 30-2.021(1)(A); 12 CSR 30-3.021(1)(C); 12 CSR 30-3.005—Appeals of the Assessment of Real Property to the Local Board of Equalization Under the Two-Year Assessed Value Cycle; 12 CSR 30-3.010—Appeals from the Local Board of Equalization; 12 CSR 30-3.020—Intervention; or 12 CSR 30-3.025—Collateral Estoppel.

(8) Any complaint, correspondence, routine motion, or application for review shall be accepted for filing by electronic transmission. Electronic filings received by the commission before 5:00 p.m. of a regular workday are deemed filed as of that day. Filings received after 5:00 p.m. are deemed filed on the next regular commission workday. Time of receipt is determined by the commission's facsimile machine or computer. The time when transmission began shall be used to determine if transmission occurred prior to 5:00 p.m. If a document is not received by the commission or if it is illegible, it is deemed not filed. Risk of loss in transmission, receipt, or illegibility is upon the party transmitting and filing by electronic transmission. The person filing a complaint, correspondence, motion, application for review, or other filing by electronic transmission shall retain the signed filing and make it available upon order of the commission.

(9) No cameras, lights, or mechanical recording devices shall be operated in the hearing room while the hearing is in progress, other than by personnel of the commission or by a court reporter with the permission of the commission.

### **12 CSR 30-3.015 Orders of the Commission Under the Two-Year Assessed Value Cycle**

**PURPOSE:** This rule establishes the procedure for implementing commission decisions under the two-year assessed value cycle for real property.

(1) In an appeal to the commission from the local board of equalization, the decision and order issued by the commission shall set the assessed value of the real property which is the subject of the appeal for both the first year of the two (2)-year cycle (odd-numbered year) and the second year of the two (2)-year cycle (even-numbered year), unless one (1) of the following conditions are met:

(A) The taxpayer did not file an appeal of his/her assessment to the commission in the odd-numbered year; or

(B) At the hearing before the commission or one (1) of its hearing officers on the appeal of the odd-numbered year's assessment, the assessor or the taxpayer presents evidence which shows that there has been new construction or property improvements to the subject property as defined in 12 CSR 30-3.001 during the odd-numbered year.



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(2) A decision and order issued by the commission which sets the assessed value of a property for both years of the two (2)-year cycle shall be implemented for the even-numbered year as follows:

(A) If the decision and order is issued and becomes final prior to the assessor returning the assessor's book for the even-numbered year to the county governing body, the assessor shall enter the assessed value as determined by the commission into the assessor's book;

(B) If the decision and order is issued and becomes final after the assessor returns the assessor's book for the even-numbered year to the county governing body but before the local board of equalization issues a decision on an appeal of the assessment to it in the even-numbered year, the local board of equalization shall issue its decision based on the assessed value as determined by the commission; and

(C) If the decision and order is issued and becomes final after the local board of equalization issues a decision on an appeal of an assessment to it in the even-numbered year, if the assessed value is changed by the commission, the county clerk shall enter the assessed value as determined by the commission in the supplemental tax book of the county for the even-numbered year.

### 12 CSR 30-3.020 Intervention

*PURPOSE: This rule establishes the procedure for nonparties to appear and be heard and for intervention.*

(1) All persons affected or liable to be affected by review by the commission of any assessment, whether or not they are made parties to the appeal by intervention, may submit a memorandum setting forth their position on the issue(s) in the given appeal, and serve a copy of same upon counsel for the parties or upon the parties if there is no counsel. However, nonparties are not entitled to notice of hearings and decisions, except as provided generally by Section 610.020 RSMo, unless they are made designated persons by the complainants as provided by Section 536.067(3) RSMo. Nonparties are not entitled to take depositions, nor entitled to the issuance of subpoenas nor to introduce exhibits, testify, or cross-examine witnesses.

(2) Any person may apply for leave to intervene in any contested case before the commission by serving a motion for leave to intervene upon all then existing parties and upon the commission. The motion shall state the grounds for it and whether the applicant is seeking to intervene on behalf of the complainant or the respondent. The motion shall be filed within sixty (60) days of the time of the notice of institution of the case. Oral argument will be scheduled by the commission on the motion only if there is a written objection to the intervention filed by any party not later than fifteen (15) days after the filing of the motion to intervene. Upon its own motion, the commission, in any case, may order that oral argument be had on the issue of the proposed intervention. A separate motion must be filed for each contested case in which an applicant seeks to intervene.



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(3) An applicant may be granted permission to become an intervenor based upon a balancing of the nature and the extent of the interest of all of the complainants, respondents, intervenors and applicants in the appeal. For example, in the case of an appeal filed pursuant to Section 138.430 RSMo, the commission may grant an applicant the status of intervenor based upon the following five (5) interests if they are found to weigh in balance in favor of the applicant:

(A) Substantially all of the applicant's operating revenues are derived from *ad valorem* tax revenues;

(B) If the decreases in assessed valuation paid by the complainants and against which the tax rate established by the applicant will be applied are granted by the commission, then decreases in assessed valuation will reduce the tax revenues available for distribution to the applicant;

(C) A reduction in the tax revenues will have a direct and immediate impact upon the applicant;

(D) The respondent, an existing party, may not adequately represent the interests of the applicant; and

(E) The complainants will not be prejudiced by intervention nor will they be precluded from protecting or asserting their interest in decreases in assessed valuation.

(4) For the purpose of this rule, person is defined as provided by Section 1.020 RSMo.

### **12 CSR 30-3.075 Receipt of Evidence Indicating Value Greater than Assessor or Board— First Class Charter Counties**

*PURPOSE: This rule explains the procedures which hearing officers are to follow relative to evidence offered by assessors in first class charter counties which indicates a property value greater than the value that has been determined by the board of equalization or the assessor previously.*

(1) In any case in a first class charter county or a city not within a county, where the assessor presents evidence which indicates a valuation higher than the value finally determined by the assessor or the value determined by the board of equalization, whichever is higher, for that assessment period, such evidence will only be received for the purpose of sustaining the assessor's or board's valuation, and not for increasing the valuation of the property under appeal.

### **12 CSR 30-3.090 Determining Class Life for Tangible Personal Property**

*PURPOSE: This rule sets out the publication assessors are to use when estimating value for depreciable tangible personal property for mass appraisal purposes.*

(1) For purposes of assessors estimating the value of depreciable tangible personal property for mass appraisal purposes in accordance with Section 137.122 RSMo, class life and recovery periods shall be determined by reference to Internal Revenue Service Publication 946—How to Depreciate Property or successor publications thereto. Specifically, class lives and recovery



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periods shall be determined by reference to Appendix B—Table of Class Lives and Recovery Periods. Class life shall be determined under Table B-1 and Table B-2 under the column—Class Life (in years). Recovery period shall be determined by the number corresponding to the Class Life number for given items of machinery, tools, appliances and equipment under the column—GDS (MACRS).



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### Administrative Procedure and Review

**536.010. Definitions.** — For the purpose of this chapter:

(2) **"Agency"** means any administrative officer or body existing under the constitution or by law and authorized by law or the constitution to make rules or to adjudicate contested cases, except those in the legislative or judicial branches;

(4) **"Contested case"** means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing;

(5) The term **"decision"** includes decisions and orders whether negative or affirmative in form;

(8) **"State agency"** means each board, commission, department, officer or other administrative office or unit of the state other than the general assembly, the courts, the governor, or a political subdivision of the state, existing under the constitution or statute, and authorized by the constitution or statute to make rules or to adjudicate contested cases.

#### **536.060. Informal disposition of case by stipulation — summary action — waiver.**

Nothing contained in Sections 536.060 to 536.095 shall be construed (1) to impair the power of any agency to take lawful summary action in those matters where a contested case is not required by law, or (2) to prevent any agency authorized to do so from assisting claimants or other parties in any proper manner, or (3) to prevent the waiver by the parties (including, in a proper case, the agency) of procedural requirements which would otherwise be necessary before final decision, or (4) to prevent stipulations or agreements among the parties (including, in a proper case, the agency).

**536.063. Contested case, how instituted — pleadings — copies sent parties.** — In any contested case:

(1) The contested case shall be commenced by the filing of a writing by which the party or agency instituting the proceeding seeks such action as by law can be taken by the agency only after opportunity for hearing, or seeks a hearing for the purpose of obtaining a decision reviewable upon the record of the proceedings and evidence at such hearing, or upon such record and additional evidence, either by a court or by another agency. Answering, intervening and amendatory writings and motions may be filed in any case and shall be filed where required by rule of the agency, except that no answering instrument shall be required unless the notice of institution of the case states such requirement. Entries of appearance shall be permitted;

(2) Any writing filed whereby affirmative relief is sought shall state what relief is sought or proposed and the reason for granting it, and shall not consist merely of statements or charges phrased in the language of a statute or rule; provided, however, that this subdivision shall not apply when the writing is a notice of appeal as authorized by law;





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(3) Reasonable opportunity shall be given for the preparation and presentation of evidence bearing on any issue raised or decided or relief sought or granted. Where issues are tried without objection or by consent, such issues shall be deemed to have been properly before the agency. Any formality of procedure may be waived by mutual consent;

(4) Every writing seeking relief or answering any other writing, and any motion shall state the name and address of the attorney, if any, filing it; otherwise the name and address of the party filing it;

(5) By rule the agency may require any party filing such a writing to furnish, in addition to the original of such writing, the number of copies required for the agency's own use and the number of copies necessary to enable the agency to comply with the provisions of this subdivision hereinafter set forth. The agency shall, without charge therefor, mail one copy of each such writing, as promptly as possible after it is filed, to every party or his or her attorney who has filed a writing or who has entered his or her appearance in the case, and who has not theretofore been furnished with a copy of such writing and shall have requested copies of the writings; provided that in any case where the parties are so numerous that the requirements of this subdivision would be unduly onerous, the agency may in lieu thereof (a) notify all parties of the fact of the filing of such writing, and (b) permit any party to copy such writing;

(6) When a holder of a license, registration, permit, or certificate of authority issued by the division of professional registration or a board, commission, or committee of the division of professional registration against whom an affirmative decision is sought has failed to plead or otherwise respond in the contested case and adequate notice has been given under Section 536.067 upon a properly pled writing filed to initiate the contested case under this chapter, a default decision shall be entered against the licensee without further proceedings. The default decision shall grant such relief as requested by the division of professional registration, board, committee, commission, or office in the writing initiating the contested case as allowed by law. Upon motion stating facts constituting a meritorious defense and for good cause shown, a default decision may be set aside. The motion shall be made within a reasonable time, not to exceed thirty days after entry of the default decision. **"Good cause"** includes a mistake or conduct that is not intentionally or recklessly designed to impede the administrative process.

**536.067. Notice in contested case — mailing — contents — notice of hearing — time for.**  
— In any contested case:

(1) The agency shall promptly mail a notice of institution of the case to all necessary parties, if any, and to all persons designated by the moving party and to any other persons to whom the agency may determine that notice should be given. The agency or its clerk or secretary shall keep a permanent record of the persons to whom such notice was sent and of the addresses to which sent and the time when sent. Where a contested case would affect the rights, privileges or duties of a large number of persons whose interests are sufficiently similar that they may be considered as a class, notice may in a proper case be given to a reasonable number thereof as representatives



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of such class. In any case where the name or address of any proper or designated party or person is not known to the agency, and where notice by publication is permitted by law, then notice by publication may be given in accordance with any rule or regulation of the agency or if there is no such rule or regulation, then, in a proper case, the agency may by a special order fix the time and manner of such publication;

(2) The notice of institution of the case to be mailed as provided in this Section shall state in substance:

- (a) The caption and number of the case;
- (b) That a writing seeking relief has been filed in such case, the date it was filed, and the name of the party filing the same;
- (c) A brief statement of the matter involved in the case unless a copy of the writing accompanies said notice;
- (d) Whether an answer to the writing is required, and if so the date when it must be filed;
- (e) That a copy of the writing may be obtained from the agency, giving the address to which application for such a copy may be made. This may be omitted if the notice is accompanied by a copy of such writing;
- (f) The location in the Code of State Regulations of any rules of the agency regarding discovery or a statement that the agency shall send a copy of such rules on request;

(3) Unless the notice of hearing hereinafter provided for shall have been included in the notice of institution of the case, the agency shall, as promptly as possible after the time and place of hearing have been determined, mail a notice of hearing to the moving party and to all persons and parties to whom a notice of institution of the case was required to be or was mailed, and also to any other persons who may thereafter have become or have been made parties to the proceeding. The notice of hearing shall state:

- (a) The caption and number of the case;
  - (b) The time and place of hearing;
- (4) No hearing in a contested case shall be had, except by consent, until a notice of hearing shall have been given substantially as provided in this Section, and such notice shall in every case be given a reasonable time before the hearing. Such reasonable time shall be at least ten days except in cases where the public morals, health, safety or interest may make a shorter time reasonable; provided that when a longer time than ten days is prescribed by statute, no time shorter than that so prescribed shall be deemed reasonable;



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(5) When a holder of a license, registration, permit, or certificate of authority issued by the division of professional registration or a board, commission, or committee of the division of professional registration against whom an affirmative decision is sought has failed to plead or otherwise respond in the contested case and adequate notice has been given under this Section upon a properly pled writing filed to initiate the contested case under this chapter, a default decision shall be entered against the holder of a license, registration, permit, or certificate of authority without further proceedings. The default decision shall grant such relief as requested by the division of professional registration, board, committee, commission, or office in the writing initiating the contested case as allowed by law. Upon motion stating facts constituting a meritorious defense and for good cause shown, a default decision may be set aside. The motion shall be made within a reasonable time, not to exceed thirty days after entry of the default decision. **"Good cause"** includes a mistake or conduct that is not intentionally or recklessly designed to impede the administrative process.

#### **536.070. Evidence — witnesses — objections — judicial notice — affidavits as evidence — transcript. —** In any contested case:

- (1) Oral evidence shall be taken only on oath or affirmation;
- (2) Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not the subject of the direct examination, to impeach any witness regardless of which party first called him or her to testify, and to rebut the evidence against him or her;
- (3) A party who does not testify in his or her own behalf may be called and examined as if under cross-examination;
- (4) Each agency shall cause all proceedings in hearings before it to be suitably recorded and preserved. A copy of the transcript of such a proceeding shall be made available to any interested person upon the payment of a fee which shall in no case exceed the reasonable cost of preparation and supply;
- (5) Records and documents of the agency which are to be considered in the case shall be offered in evidence so as to become a part of the record, the same as any other evidence, but the records and documents may be considered as a part of the record by reference thereto when so offered;
- (6) Agencies shall take official notice of all matters of which the courts take judicial notice. They may also take official notice of technical or scientific facts, not judicially cognizable, within their competence, if they notify the parties, either during a hearing or in writing before a hearing, or before findings are made after hearing, of the facts of which they propose to take such notice and give the parties reasonable opportunity to contest such facts or



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otherwise show that it would not be proper for the agency to take such notice of them;

(7) Evidence to which an objection is sustained shall, at the request of the party seeking to introduce the same, or at the instance of the agency, nevertheless be heard and preserved in the record, together with any cross-examination with respect thereto and any rebuttal thereof, unless it is wholly irrelevant, repetitious, privileged, or unduly long;

(8) Any evidence received without objection which has probative value shall be considered by the agency along with the other evidence in the case. The rules of privilege shall be effective to the same extent that they are now or may hereafter be in civil actions. Irrelevant and unduly repetitious evidence shall be excluded;

(9) Copies of writings, documents and records shall be admissible without proof that the originals thereof cannot be produced, if it shall appear by testimony or otherwise that the copy offered is a true copy of the original, but the agency may, nevertheless, if it believes the interests of justice so require, sustain any objection to such evidence which would be sustained were the proffered evidence offered in a civil action in the circuit court, but if it does sustain such an objection, it shall give the party offering such evidence reasonable opportunity and, if necessary, opportunity at a later date, to establish by evidence the facts sought to be proved by the evidence to which such objection is sustained;

(10) Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect the weight of such evidence, but such showing shall not affect its admissibility. The term "**business**" shall include business, profession, occupation and calling of every kind;

(11) The results of statistical examinations or studies, or of audits, compilations of figures, or surveys, involving interviews with many persons, or examination of many records, or of long or complicated accounts, or of a large number of figures, or involving the ascertainment of many related facts, shall be admissible as evidence of such results, if it shall appear that such examination, study, audit, compilation of figures, or survey was made by or under the supervision of a witness, who is present at the hearing, who testifies to the accuracy of such results, and who is subject to cross-examination, and if it shall further appear by evidence adduced that the witness making or under whose supervision such examination, study, audit, compilation of figures, or survey was made was basically qualified to make it. All the circumstances relating to the making of such an examination, study, audit, compilation of figures or survey, including the nature and extent of the qualifications of the maker, may be shown to affect the weight of such evidence but such showing shall not affect its admissibility;



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(12) Any party or the agency desiring to introduce an affidavit in evidence at a hearing in a contested case may serve on all other parties (including, in a proper case, the agency) copies of such affidavit in the manner hereinafter provided, at any time before the hearing, or at such later time as may be stipulated. Not later than seven days after such service, or at such later time as may be stipulated, any other party (or, in a proper case, the agency) may serve on the party or the agency who served such affidavit an objection to the use of the affidavit or some designated portion or portions thereof on the ground that it is in the form of an affidavit; provided, however, that if such affidavit shall have been served less than eight days before the hearing such objection may be served at any time before the hearing or may be made orally at the hearing. If such objection is so served, the affidavit or the part thereof to which objection was made, may not be used except in ways that would have been permissible in the absence of this subdivision; provided, however, that such objection may be waived by the party or the agency making the same. Failure to serve an objection as aforesaid, based on the ground aforesaid, shall constitute a waiver of all objections to the introduction of such affidavit, or of the parts thereof with respect to which no such objection was so served, on the ground that it is in the form of an affidavit, or that it constitutes or contains hearsay evidence, or that it is not, or contains matters which are not, the best evidence, but any and all other objections may be made at the hearing. Nothing herein contained shall prevent the cross-examination of the affiant if he or she is present in obedience to a subpoena or otherwise and if he or she is present, he or she may be called for cross-examination during the case of the party who introduced the affidavit in evidence. If the affidavit is admissible in part only it shall be admitted as to such part, without the necessity of preparing a new affidavit. The manner of service of such affidavit and of such objection shall be by delivering or mailing copies thereof to the attorneys of record of the parties being served, if any, otherwise, to such parties, and service shall be deemed complete upon mailing; provided, however, that when the parties are so numerous as to make service of copies of the affidavit on all of them unduly onerous, the agency may make an order specifying on what parties service of copies of such affidavit shall be made, and in that case a copy of such affidavit shall be filed with the agency and kept available for inspection and copying. Nothing in this subdivision shall prevent any use of affidavits that would be proper in the absence of this subdivision.

**536.073. Depositions, use of — how taken — discovery, when available — enforcement — administrative hearing commission to make rules for depositions by stipulation — rules subject to suspension by joint committee on administrative rules. —** 1. In any contested case before an agency created by the constitution or state statute, any party may take and use depositions in the same manner, upon and under the same conditions, and upon the same notice, as is or may hereafter be provided for with respect to the taking and using of depositions in civil actions in the circuit court; provided, that any commission which may be required shall be issued\* out of the circuit court or the office of the clerk thereof, within and for the county where the headquarters of the agency is located or where the hearing is to be held; and provided further, that no commissioner shall be appointed for the taking in this state of depositions.



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2. In addition to the powers granted in subsection 1 of this Section, any agency authorized to hear a contested case may make rules to provide that the parties may obtain all or any designated part of the same discovery that any Missouri supreme court rule provides for civil actions in circuit court. The agency may enforce discovery by the same methods, terms and conditions as provided by supreme court rule in civil actions in the circuit court. Except as otherwise provided by law, no agency discovery order which:

- (1) Requires a physical or mental examination;
- (2) Permits entrance upon land or inspection of property without permission of the owner; or

(3) Purports to hold any person in contempt; shall be enforceable except upon order of the circuit court of the county in which the hearing will be held or the circuit court of Cole County at the option of the person seeking enforcement, after notice and hearing.

**536.075. Discovery rule violations, sanctions.** — In any proceeding before the administrative hearing commission, where a party to the proceeding moves for sanctions for an alleged violation of any discovery rule, the moving party shall in the motion certify that reasonable efforts were made to resolve the dispute informally with the opposing party.

**536.077. Subpoenas, issuance — form — how served — how enforced.** — In any contested case before an agency created by the constitution or state statute, such agency shall upon request of any party issue subpoenas and shall in a proper case issue subpoenas duces tecum. Subpoenas other than subpoenas duces tecum shall on request of any party be issued with the caption and number of the case, the name of the witness, and the date for appearance in blank, but such caption, number, name and date shall be filled in by such party before service. Subpoenas shall extend to all parts of the state, and shall be served and returned as in civil actions in the circuit court. The witness shall be entitled to the same fees and, if compelled to travel more than forty miles from his place of residence, shall be entitled to the same tender of fees for travel and attendance, and at the same time, as is now or may hereafter be provided for witnesses in civil actions in the circuit court, such fees to be paid by the party or agency subpoenaing him, except where the payment of such fees is otherwise provided for by law. The agency or the party at whose request the subpoena is issued shall enforce subpoenas by applying to a judge of the circuit court of the county of the hearing or of any county where the witness resides or may be found for an order upon any witness who shall fail to obey a subpoena to show cause why such subpoena should not be enforced, which said order and a copy of the application therefor shall be served upon the witness in the same manner as a summons in a civil action, and if the said circuit court shall, after a hearing, determine that the subpoena should be sustained and enforced, said court shall proceed to enforce said subpoena in the same manner as though said subpoena had been issued in a civil case in the circuit court. The court shall permit the agency and any party to intervene in the enforcement action. Any such agency may delegate to any member, officer, or employee thereof the power to issue subpoenas in contested cases; provided that, except where



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otherwise authorized by law, subpoenas duces tecum shall be issued only by order of the agency or a member thereof.

**536.080. Parties may file briefs — officials to hear or read evidence.** — 1. In contested cases each party shall be entitled to present oral arguments or written briefs at or after the hearing which shall be heard or read by each official of the agency who renders or joins in rendering the final decision.

2. In contested cases, each official of an agency who renders or joins in rendering a final decision shall, prior to such final decision, either hear all the evidence, read the full record including all the evidence, or personally consider the portions of the record cited or referred to in the arguments or briefs. The parties to a contested case may by written stipulation or by oral stipulation in the record at a hearing waive compliance with the provisions of this Section.

**536.083. Hearing officer not to conduct rehearing or appeal involving same issues and parties.** — Notwithstanding any other provision of law to the contrary, in any administrative hearing conducted under the procedures established in this chapter, and in any other administrative hearing conducted under authority granted any state agency, no person who acted as a hearing officer or who otherwise conducted the first administrative hearing involving any single issue shall conduct any subsequent administrative rehearing or appeal involving the same issue and same parties.

**536.085. Definitions.** — As used in Section 536.087, the following terms mean:

(1) **"Agency proceeding"**, an adversary proceeding in a contested case pursuant to this chapter in which the state is represented by counsel, but does not include proceedings for determining the eligibility or entitlement of an individual to a monetary benefit or its equivalent, child custody proceedings, eminent domain proceedings, driver's license proceedings, vehicle registration proceedings, proceedings to establish or fix a rate, or proceedings before the state tax commission;

(2) **"Party"**:

(a) An individual whose net worth did not exceed two million dollars at the time the civil action or agency proceeding was initiated; or

(b) Any owner of an unincorporated business or any partnership, corporation, association, unit of local government or organization, the net worth of which did not exceed seven million dollars at the time the civil action or agency proceeding was initiated, and which had not more than five hundred employees at the time the civil action or agency proceeding was initiated;

(3) **"Prevails"**, obtains a favorable order, decision, judgment, or dismissal in a civil action or agency proceeding;

(4) **"Reasonable fees and expenses"** includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by



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the court or agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees. The amount of fees awarded as reasonable fees and expenses shall be based upon prevailing market rates for the kind and quality of the services furnished, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the state in the type of civil action or agency proceeding, and attorney fees shall not be awarded in excess of seventy-five dollars per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee;

(5) "State", the state of Missouri, its officers and its agencies, but shall not include political subdivisions of the state.

**536.087. Reasonable fees and expenses awarded prevailing party in civil action or agency proceeding — application, content, filed with court or agency where party appeared — appeal by state, effect — power of court or agency to reduce requested amount or deny, when — form of award — judicial review, when. — 1.** A party who prevails in an agency proceeding or civil action arising therefrom, brought by or against the state, shall be awarded those reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust.

2. In awarding reasonable fees and expenses under this Section to a party who prevails in any action for judicial review of an agency proceeding, the court shall include in that award reasonable fees and expenses incurred during such agency proceeding unless the court finds that during such agency proceeding the position of the state was substantially justified, or that special circumstances make an award unjust.

3. A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in an agency proceeding or final judgment in a civil action, submit to the court, agency or commission which rendered the final disposition or judgment an application which shows that the party is a prevailing party and is eligible to receive an award under this Section, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed. The party shall also allege that the position of the state was not substantially justified. The fact that the state has lost the agency proceeding or civil action creates no legal presumption that its position was not substantially justified. Whether or not the position of the state was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by an agency upon which a civil action is based) which is made in the agency proceeding or civil action for which fees and other expenses are sought, and on the basis of the record of any hearing the court or agency deems appropriate to determine whether an award of reasonable fees and expenses should be





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made, provided that any such hearing shall be limited to consideration of matters which affected the agency's decision leading to the position at issue in the fee application.

4. A prevailing party in an agency proceeding shall submit an application for fees and expenses to the administrative body before which the party prevailed. A prevailing party in a civil action on appeal from an agency proceeding shall submit an application for fees and expenses to the court. The filing of an application shall not stay the time for appealing the merits of a case. When the state appeals the underlying merits of an adversary proceeding, no decision on the application for fees and other expenses in connection with that adversary proceeding shall be made under this Section until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

5. The court or agency may either reduce the amount to be awarded or deny any award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

6. The decision of a court or an agency on the application for reasonable fees and expenses shall be in writing, separate from the judgment or order of the court or the administrative decision which determined the prevailing party, and shall include written findings and conclusions and the reason or basis therefor. The decision of a court or an agency on the application for fees and other expenses shall be final, subject respectively to appeal or judicial review.

7. If a party or the state is dissatisfied with a determination of fees and other expenses made in an agency proceeding, that party or the state may within thirty days after the determination is made, seek judicial review of that determination from the court having jurisdiction to review the merits of the underlying decision of the agency adversary proceeding. If a party or the state is dissatisfied with a determination of fees and other expenses made in a civil action arising from an agency proceeding, that party or the state may, within the time permitted by law, appeal that order or judgment to the appellate court having jurisdiction to review the merits of that order or judgment. The reviewing or appellate court's determination on any judicial review or appeal heard under this subsection shall be based solely on the record made before the agency or court below. The court may modify, reverse or reverse and remand the determination of fees and other expenses if the court finds that the award or failure to make an award of fees and other expenses, or the calculation of the amount of the award, was arbitrary and capricious, was unreasonable, was unsupported by competent and substantial evidence, or was made contrary to law or in excess of the court's or agency's jurisdiction. Awards made pursuant to this act\* shall be payable from amounts appropriated therefor. The state agency against which the award was made shall request an appropriation to pay the award.



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**536.090. Decisions in writing — notice.** — Every decision and order in a contested case shall be in writing, and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order. Immediately upon deciding any contested case the agency shall give written notice of its decision by delivering or mailing such notice to each party, or his attorney of record, and shall upon request furnish him with a copy of the decision, order, and findings of fact and conclusions of law.

**536.095. Contempt — procedure for punishment.** — In any hearing in a contested case before an agency created by the constitution or state statute if any person acts or refuses to act in such manner that a contempt of court would have been committed if the case were a civil action before a circuit court, the agency in addition to any other powers it may have by law may apply to a judge of the circuit court of the county of the hearing or of any county where such person resides or may be found, for an order on any such person to show cause why he should not be punished as for contempt, which order and copy of the application therefor shall be served upon the person in the same manner as a summons in a civil action. Thereafter the same proceedings shall be had in such court as in cases of contempt of a circuit court.

**536.100. Party aggrieved entitled to judicial review — waiver of independent review, when.** — Any person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review thereof, as provided in Sections 536.100 to 536.140, unless some other provision for judicial review is provided by statute; provided, however, that nothing in this chapter contained shall prevent any person from attacking any void order of an agency at any time or in any manner that would be proper in the absence of this Section. If the agency or any board, other than the administrative hearing commission, established to provide independent review of the decisions of a department or division that is authorized to promulgate rules and regulations under this chapter fails to issue a final decision in a contested case within the earlier of:

- (1) Sixty days after the conclusion of a hearing on the contested case; or
- (2) One hundred eighty days after the receipt by the agency of a written request for the issuance of a final decision, then the person shall be considered to have exhausted all administrative remedies and shall be considered to have received a final decision in favor of the agency and shall be entitled to immediate judicial review as provided in Sections 536.100 to 536.140 or other provision for judicial review provided by statute. In cases, whether contested or not, where the law provides for an independent review of an agency's decision by a board other



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than the administrative hearing commission and further provides for a de novo review of the board's decision by the circuit court, a party aggrieved by the agency's decision may, within thirty days after it receives notice of that decision, waive independent review by the board and instead file a petition in the circuit court for the de novo review of the agency's decision. The party filing the petition under this Section shall be considered to have exhausted all administrative remedies.

**536.110. Petition, when filed — process — venue.** — 1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within thirty days after the mailing or delivery of the notice of the agency's final decision.

2. Such petition may be filed without first seeking a rehearing, but in cases where agencies have authority to entertain motions for rehearing and such a motion is duly filed, the thirty-day period aforesaid shall run from the date of the delivery or mailing of notice of the agency's decision on such motion. No summons shall issue in such case, but copies of the petition shall be delivered to the agency and to each party of record in the proceedings before the agency or to his attorney of record, or shall be mailed to the agency and to such party or his said attorney by registered mail, and proof of such delivery or mailing shall be filed in the case.

3. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence or if any plaintiff is a corporation, domestic or foreign, having a registered office or business office in this state, in the county of such registered office or business office, except that, in cases involving real property or improvements thereto, the venue shall be the circuit court of the county where such real property is located. The court in its discretion may permit other interested persons to intervene.

**536.120. Suspension of decisions or orders.** — Pending the filing and final disposition of proceedings for review under Sections 536.100 to 536.140, the agency may stay the enforcement of its order and may temporarily grant or extend relief denied or withheld. Any court in which such proceedings for review may be pending may issue all necessary and appropriate process to stay or require the agency to stay the enforcement of its order or temporarily to grant or extend or require the agency temporarily to grant or extend relief denied or withheld, pending the final disposition of such proceedings for review. Such stay or other temporary relief by a reviewing court may be conditioned upon such terms as shall appear to the court to be proper. No such stay or temporary relief shall be granted by a reviewing court without notice, except in cases of threatened irreparable injury; and when in any case a stay or other temporary relief is granted without notice the court shall then make an order, of which due notice shall be given, setting the matter down for hearing as promptly as possible on the question whether such stay or other temporary relief shall be continued in effect. No such stay or other temporary relief shall be granted or continued unless the court is satisfied that the public interest will not be prejudiced thereby.



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**536.130. Record on judicial review.** — 1. Within thirty days after the filing of the petition or within such further time as the court may allow, the record before the agency shall be filed in the reviewing court. Such record shall consist of any one of the following:

(1) Such parts of the record, proceedings and evidence before the agency as the parties by written stipulation may agree upon;

(2) An agreed statement of the case, agreed to by all parties and approved as correct by the agency;

(3) A complete transcript of the entire record, proceedings and evidence before the agency. Evidence may be stated in either question and answer or narrative form. Documents may be abridged by omitting irrelevant and formal parts thereof. Any matter not essential to the decision of the questions presented by the petition may be omitted. The decision, order and findings of fact and conclusions of law shall in every case be included.

2. The record filed in the reviewing court shall be properly certified by the agency, and shall be typewritten, mimeographed, printed, or otherwise suitably reproduced. In any case where papers, documents or exhibits are to be made a part of the record in the reviewing court, the originals of all or any part thereof, or photostatic or other copies which may have been substituted therefor, may, if the agency permits, be sent to the reviewing court instead of having the same copied into the record.

3. In any case where any party fails or refuses to agree to the correctness of a record, the agency shall decide as to its correctness and certify the record accordingly. If any party shall be put to additional expense by reason of the failure of another party to agree to a proper shortening of the record, the court may tax the amount of such additional expense against the offending party as costs.

4. The record to be filed in the reviewing court shall be filed by the plaintiff, or at the request of the plaintiff shall be transmitted by the agency directly to the clerk of the reviewing court and by him filed; provided, that when original documents are to be sent to the reviewing court they shall be transmitted by the agency directly, as aforesaid. The court may require or permit subsequent corrections of or additions to the record.

**536.140. Scope of judicial review — judgment — appeals.** — 1. The court shall hear the case without a jury and, except as otherwise provided in subsection 4 of this Section, shall hear it upon the petition and record filed as aforesaid.

2. The inquiry may extend to a determination of whether the action of the agency

(1) Is in violation of constitutional provisions;



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- (2) Is in excess of the statutory authority or jurisdiction of the agency;
- (3) Is unsupported by competent and substantial evidence upon the whole record;
- (4) Is, for any other reason, unauthorized by law;
- (5) Is made upon unlawful procedure or without a fair trial;
- (6) Is arbitrary, capricious or unreasonable;
- (7) Involves an abuse of discretion.

The scope of judicial review in all contested cases, whether or not subject to judicial review pursuant to Sections 536.100 to 536.140, and in all cases in which judicial review of decisions of administrative officers or bodies, whether state or local, is now or may hereafter be provided by law, shall in all cases be at least as broad as the scope of judicial review provided for in this subsection; provided, however, that nothing herein contained shall in any way change or affect the provisions of Sections 311.690\* and 311.700\*.

3. Whenever the action of the agency being reviewed does not involve the exercise by the agency of administrative discretion in the light of the facts, but involves only the application by the agency of the law to the facts, the court may upon application of any party conduct a de novo review of the agency decision.

4. Wherever under subsection 3 of this Section or otherwise the court is entitled to weigh the evidence and determine the facts for itself, the court may hear and consider additional evidence if the court finds that such evidence in the exercise of reasonable diligence could not have been produced or was improperly excluded at the hearing before the agency. Wherever the court is not entitled to weigh the evidence and determine the facts for itself, if the court finds that there is competent and material evidence which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded at the hearing before the agency, the court may remand the case to the agency with directions to reconsider the same in the light of such evidence. The court may in any case hear and consider evidence of alleged irregularities in procedure or of unfairness by the agency, not shown in the record.

5. The court shall render judgment affirming, reversing, or modifying the agency's order, and may order the reconsideration of the case in the light of the court's opinion and judgment, and may order the agency to take such further action as it may be proper to require; but the court shall not substitute its discretion for discretion legally vested in the agency, unless the court determines that the agency decision was arbitrary or capricious.



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6. Appeals may be taken from the judgment of the court as in other civil cases.

**536.150. Review by injunction or original writ, when — scope.** — 1. When any administrative officer or body existing under the constitution or by statute or by municipal charter or ordinance shall have rendered a decision which is not subject to administrative review, determining the legal rights, duties or privileges of any person, including the denial or revocation of a license, and there is no other provision for judicial inquiry into or review of such decision, such decision may be reviewed by suit for injunction, certiorari, mandamus, prohibition or other appropriate action, and in any such review proceeding the court may determine the facts relevant to the question whether such person at the time of such decision was subject to such legal duty, or had such right, or was entitled to such privilege, and may hear such evidence on such question as may be properly adduced, and the court may determine whether such decision, in view of the facts as they appear to the court, is unconstitutional, unlawful, unreasonable, arbitrary, or capricious or involves an abuse of discretion; and the court shall render judgment accordingly, and may order the administrative officer or body to take such further action as it may be proper to require; but the court shall not substitute its discretion for discretion legally vested in such administrative officer or body, and in cases where the granting or withholding of a privilege is committed by law to the sole discretion of such administrative officer or body, such discretion lawfully exercised shall not be disturbed.

2. Nothing in this Section shall apply to contested cases reviewable pursuant to Sections 536.100 to 536.140.

3. Nothing in this Section shall be construed to impair any power to take summary action lawfully vested in any such administrative officer or body, or to limit the jurisdiction of any court or the scope of any remedy available in the absence of this Section.

**536.160. Refund of funds paid into court, when.** — In the event a reviewing court reverses a decision of a state agency, remands the matter to the agency for further proceedings and orders the payment into court of any increase in funds authorized by said decision, and thereafter, on remand, the state agency reaches the same result, reaffirms or ratifies its prior decision, then the entity which paid such funds into court shall be entitled to a refund of such funds, including all interest accrued thereon. This provision is enacted in part to clarify and specify the law in existence prior to August 28, 2001.



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### Supreme Court Rules

#### 56.01. General Provisions Governing Discovery

(a) **Discovery Methods.** Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) **Scope of Discovery.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The party seeking discovery shall bear the burden of establishing relevance.

(2) *Insurance Agreements.* A party may obtain discovery of the existence and contents, including production of the policy and declaration page, of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this [Rule 56.01\(b\)\(2\)](#), an application for insurance shall not be treated as part of an insurance agreement.

(3) *Trial Preparation: Materials.* Subject to the provisions of [Rule 56.01\(b\)\(4\)](#), a party may obtain discovery of documents and tangible things otherwise discoverable under [Rule 56.01\(b\)\(1\)](#) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative, including an attorney, consultant, surety, indemnitor, insurer, or agent, only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the adverse party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. For purposes of this paragraph, a statement previously



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made is: (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, audio, video, motion picture or other recording, or a transcription thereof, of the party or of a statement made by the party and contemporaneously recorded.

(4) **Trial Preparation: Experts.** Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of Rule 56.01(b)(1) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial by providing such expert's name, address, occupation, place of employment and qualifications to give an opinion, or if such information is available on the expert's curriculum vitae, such curriculum vitae may be attached to the interrogatory answers as a full response to such interrogatory, and to state the general nature of the subject matter on which the expert is expected to testify, and the expert's hourly deposition fee.

(B) A party may discover by a deposition the facts and opinions to which the expert is expected to testify. Unless manifest injustice would result, the court shall require that the party seeking discovery from an expert pay the expert a reasonable hourly fee for the time such expert is deposed.

(5) ***Trial Preparations: Non-retained Experts.*** A party, through interrogatories, may require any other party to identify each non-retained expert witness, including a party, whom the other party expects to call at trial who may provide expert witness opinion testimony by providing the expert's name, address, and field of expertise. For the purpose of this Rule 56.01(b)(5), an expert witness is a witness qualified as an expert by knowledge, experience, training, or education giving testimony relative to scientific, technical or other specialized knowledge that will assist the trier of fact to understand the evidence. Discovery of the facts known and opinions held by such an expert shall be discoverable in the same manner as for lay witnesses.

(6) ***Approved Interrogatories and Request for Production.*** A circuit court by local court rule may promulgate 'approved' interrogatories and requests for production for use in specified types of litigation. Each such approved interrogatory and request for production submitted to a party shall be denominated as having been approved by reference to the local court rule and paragraph number containing the interrogatory or request for production.

(c) **Protective Orders.** Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had;





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(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If a motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 61.01 apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Stipulations Regarding Discovery Procedure. Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these Rules for other methods of discovery. Any stipulation under subdivision (2) shall be filed.



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#### **57.01. Interrogatories to Parties**

(a) Scope. Any party may serve upon any other party written interrogatories. Interrogatories may relate to any matter that can be inquired into under Rule 56.01. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(b) Issuance.

(1) Form. Interrogatories shall be in consecutively numbered paragraphs. The title shall identify the party to whom they are directed and state the number of the set of interrogatories directed to that party.

(2) When Interrogatories May be Served. Without leave of court, interrogatories may be served on:

(A) A plaintiff after commencement of the action, and

(B) Any other party with or after the party was served with process, entered an appearance, or filed a pleading.

(3) Service. Copies of the interrogatories shall be served on all parties not in default. The party issuing the interrogatories shall also provide each answering party an electronic copy, in a commonly used medium such as a diskette, CD-ROM or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state:

(A) The name of each party who is to respond to the interrogatories;

(B) The number of the set of interrogatories,

(C) The format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the interrogatories, shall be filed with the court as provided in Rule 57.01(d).

(c) Response. The interrogatories shall be answered by each party to whom they are directed. If they are directed to a public or private corporation, limited liability company, partnership, association or governmental agency, they shall be answered by an officer or agent. The party answering the interrogatories shall furnish such information as is available to the party.

(1) When the Response is Due. Responses shall be served within 30 days after the service of the interrogatories. A defendant, however, shall not be required to respond to interrogatories before the expiration of 45 days after the earlier of:

(A) The date the defendant enters an appearance, or



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(B) The date the defendant is served with process.

The court may allow a shorter or longer time.

(2) Form. The title of the response shall identify the responding party and the number of the set of interrogatories. The response to the interrogatories shall quote each interrogatory, including its original paragraph number, and immediately thereunder state the answer or all reasons for not completely answering the interrogatory, including privileges, the work product doctrine and objections.

(3) Objections and Privileges. If information is withheld because of an objection, then each reason for the objection shall be stated. If a privilege or the work product doctrine is asserted as a reason for withholding information, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) Option to Produce Business Records. If the answer to an interrogatory may be derived or ascertained from:

(A) The business records of the party upon whom the interrogatory has been served, or

(B) An examination, audit or inspection of such business records, or

(C) A compilation, abstract or summary based thereon,

and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

(5) Signing. Answers shall be signed under oath by the person making them.

Objections shall be signed by the attorney making them or by the self-represented party.

(6) Service. The party to whom the interrogatories were directed shall serve a signed original of the answers and objections, if any, on the party that issued the interrogatories and a copy on all parties not in default. The certificate of service shall state the name of the party who issued the interrogatories and the number of the set of interrogatories.

At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in Rule 57.01(d).

(d) Filing. Interrogatories and answers under this Rule 57.01 shall not be filed with the court except upon court order or contemporaneously with a motion placing the interrogatories in issue. However, both when the interrogatories and answers are served, the party serving them shall file



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with the court a certificate of service.

The certificate shall show the caption of the case, the name of the party served, the date and manner of service, the designation of the document, e.g., first interrogatories or answers to second interrogatories, and the signature of the serving party or attorney. The answers bearing the original signature of the party answering the interrogatories shall be served on the party submitting the interrogatories, who shall be the custodian thereof until the entire case is finally disposed.

Copies of interrogatory answers may be used in all court proceedings to the same extent the original answers may be used.

(e) Enforcement. The party submitting the interrogatory may move for an order under Rule 61.01(b) with respect to any objection to or other failure to answer an interrogatory.

(f) Use at Trial. Interrogatory answers may be used to the extent permitted by the rules of evidence.

#### 57.02. Depositions Before Action or Pending Appeal

##### (a) Before Action.

(1) *Petition.* A person who desires to perpetuate testimony of any person regarding any matter that may be cognizable in any court of Missouri may file a verified petition in the circuit court in the county of the residence of any expected adverse party. The petition shall be captioned in the name of the petitioner and shall show: (1) that the petitioner expects to be a party to an action cognizable in a court of Missouri but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and the petitioner's interest therein, (3) the facts desired to be established by the proposed testimony and the reasons for desiring to perpetuate it, (4) the names or a description of the persons expected to be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony that is expected to be elicited from each.

The petitioner shall ask for an order authorizing the taking of the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) *Notice and Service.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least thirty days before the date of hearing, the notice shall be served either within or without the state in the manner provided for service of summons; but if such service cannot with due



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diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise and shall appoint, for persons not personally served with a summons in this state, an attorney who shall represent them and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 52.02 apply.

(3) *Order and Examination.* If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written questions. The depositions may then be taken in accordance with these Rules; and the court may make orders of the kind provided for by Rules 58.01 and 60.01. For the purpose of applying these Rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be considered as referring to the court in which the petition for such deposition was filed.

(4) *Use of Deposition.* If a deposition to perpetuate testimony is taken under these Rules, it may be used in any action involving the same subject matter subsequently brought in a court of Missouri, in accordance with the provisions of Rule 57.07.

(b) *Pending Appeal.* If an appeal has been taken from a judgment of a circuit court or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the circuit court. In such case, the party who desires to perpetuate the testimony may make a motion in the circuit court for leave to take the depositions, upon the same notice and service thereof as if the action were pending in that court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony expected to be elicited from each and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the deposition to be taken and may make orders of the character provided for in Rule 58.01 and Rule 60.01, a

nd thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in that court.

(c) *Perpetuation by Action.* This Rule does not limit the power of a court to entertain an action to perpetuate testimony.

#### 57.03. Depositions Upon Oral Examination

(a) *When Depositions May Be Taken.* After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court,



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granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and petition upon any defendant, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery. The attendance of witnesses may be compelled by subpoena as provided in Rule 57.09. The attendance of a party is compelled by notice as provided in subdivision (b) of this Rule. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court describes.

(b) Notice of Examination: General Requirements; Special Notice; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give not less than seven days notice in writing to every other party to the action and to a non-party deponent.

The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known. If the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs shall be stated.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

A party may attend a deposition by telephone.

(2) The court may for cause shown enlarge or shorten the time for taking the deposition.

(3) The notice to a party deponent may be accompanied by a request made in compliance with Rule 58.01 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 58.01 shall apply to the request.

(4) A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This Rule 57.03(b)(4) does not preclude taking a deposition by any other procedure authorized in these rules.



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(c) Non-stenographic Recording - Video Tape. Depositions may be recorded by the use of video tape or similar methods. The recording of the deposition by video tape shall be in addition to a usual recording and transcription method unless the parties otherwise agree.

(1) If the deposition is to be recorded by video tape, every notice or subpoena for the taking of the deposition shall state that it is to be videotaped and shall state the name, address and employer of the recording technician. If a party upon whom notice for the taking of a deposition has been served desires to have the testimony additionally recorded by other than stenographic means, that party shall serve notice on the opposing party and the witness that the proceedings are to be videotaped. Such notice must be served not less than three days prior to the date designated in the original notice for the taking of the depositions and shall state the name, address and employer of the recording technician.

(2) Where the deposition has been recorded only by video tape and if the witness and parties do not waive signature, a written transcription of the audio shall be prepared to be submitted to the witness for signature as provided in Rule 57.03(f).

(3) The witness being deposed shall be sworn as a witness on camera by an authorized person.

(4) More than one camera may be used, either in sequence or simultaneously.

(5) The attorney for the party requesting the video taping of the deposition shall take custody of and be responsible for the safeguarding of the video tape and shall, upon request, permit the viewing thereof by the opposing party and if requested, shall provide a copy of the video tape at the cost of the requesting party.

(6) Unless otherwise stipulated to by the parties, the expense of videotaping is to be borne by the party utilizing it and shall not be taxed as costs.

(d) Record of Examination; Oath; Objections. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Rule 57.03(c). If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and that party shall transmit them to the officer before whom the deposition is to be taken, who shall propound them to the witness, and the questions and answers thereto shall be recorded.



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(e) **Motion to Terminate or Limit Examination.** At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or a court having general jurisdiction in the place where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 56.01(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 61.01(g) apply to the award of expenses incurred in relation to the motion.

(f) **Submission to Witness; Changes; Signing.** When the testimony is fully transcribed, the officer shall make the deposition available to the witness for examination, reading and signing, unless such examination, reading, and signing are waived by the witness or by the parties. Any changes in form or substance that the witness desires to make shall be entered upon an errata sheet provided to the witness with a statement of the reasons given for making such changes. The answers or responses as originally given, together with the changes made and reasons given therefor, shall be considered as a part of the deposition. The deposition shall then be signed by the witness before a notary public unless the witness is ill, cannot be found, is dead, or refuses to sign. If the deposition is not signed by the time of trial, it may be used as if signed, unless, on a motion to suppress, the court holds that the reasons given for the refusal to sign requires rejection of the deposition in whole or in part.

(g) **Certification, Delivery, and Filing; Exhibits; Copies.**

(1) *Certification and Delivery.* The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Upon payment of reasonable charges therefor, the officer shall deliver the deposition to the party who requested that the testimony be transcribed.

(2) *Filing*

(a) **By the Officer.** Upon delivery of a deposition, the officer shall file with the court a certificate showing the caption of the case, the name of the deponent, the date the deposition was taken, the name and address of the person having custody of the original deposition, and whether the charges have been paid. The officer shall not file a copy of the deposition with the court except upon court order.

(b) **By a Party.** A party shall not file a deposition with the court except upon specific court order or contemporaneously with a motion placing the deposition or a part thereof in issue. The court





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may enact local court rules requiring a party who intends to use a deposition at a hearing or trial to file that deposition with the court on or prior to the date of the hearing or trial.

(c) Return of Deposition. At the conclusion of the hearing or trial the deposition that has been filed or delivered to the court shall be returned to the party that filed or delivered the deposition.

(d) Retention of Deposition. The original deposition shall be maintained until the case is finally disposed.

(3) *Exhibits*. Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification if the person affords to all parties fair opportunity to verify the copies by comparison with the originals and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court pending final disposition of the civil action.

(4) *Copies*. Upon request and payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(h) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving notice to pay to such other party the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorney's fees.

(2) If a witness fails to appear for a deposition and the party giving the notice of the taking of the deposition has not complied with these rules to compel the attendance of the witness, the court may order the party giving the notice to pay to any party attending in person or by attorney the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorney's fees.



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#### 57.04. Depositions Upon Written Questions

(a) **Serving Questions; Notice.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 57.09. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating: (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 57.03(b)(4).

Within thirty days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ten days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) **Officer to Take Responses and Prepare Record.** A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 57.03(d), (f), and (g), to take the testimony of the witness in response to the questions and to prepare, certify, and deliver the deposition, attaching thereto the copy of the notice and the questions.

(c) **Notice of Delivery.** When the deposition is delivered, the party taking it promptly shall give notice thereof to all other parties.

#### 57.05. Persons Before Whom Depositions May Be Taken

(a) **In Missouri.** Within the State of Missouri, depositions shall be taken before an officer authorized by the laws of this State to administer oaths, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(b) **Elsewhere in the United States.** Within other States of the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before a person authorized to administer oaths by the laws of the United States or of the place



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where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(c) In Foreign Countries. In a foreign country, a deposition may be taken:

- (1) On notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or
- (2) Before a person commissioned by the court, and a person so commissioned has the power by virtue of his commission to administer any necessary oath and take testimony, or
- (3) Pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed 'To the Appropriate Authority in [here name the country]'. Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these Rules.

(d) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

#### 57.07. Use of Depositions in Court Proceedings

(a) Use of Depositions. Any part of a deposition that is admissible under the rules of evidence applied as though the deponent were testifying in court may be used against any party who was present or represented at the taking of the deposition or who had proper notice thereof. Depositions may be used in court for any purpose.

(b) Objections - Effect of Errors and Irregularities in Depositions.

- (1) *Regarding the Notice.* An objection to an irregularity in a deposition notice shall be made promptly by written notice served on all parties before the deposition starts; otherwise, the objection is waived.
- (2) *Regarding the Officer.* An objection to a deposition because the officer before whom it is to be taken is not qualified shall be made before the deposition begins



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or as soon thereafter as the officer's lack of qualification becomes known or could have been discovered with reasonable diligence; otherwise, the objection is waived.

(3) *Regarding the Competency of the Deponent.* An objection to a deponent's competency is not waived by failing to make an objection before or during the deposition unless the basis for the objection could have been removed if the objection had been presented before or during the deposition.

(4) *Regarding Conduct During the Deposition.* An objection to the competency, relevancy, or materiality of testimony is not waived by failure to object before or during the deposition. Errors and irregularities in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind that might be cured if promptly presented are waived unless seasonable objection thereto is made during the deposition. Objections as to the form of written questions submitted under Rule 57.04 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within ten days after service of the last questions authorized.

(5) *Regarding Irregularities in Transcription.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rule 57.03 and Rule 57.04 are waived unless a motion to suppress the deposition or some party thereof is made with reasonable promptness after such defect is, or with due diligence might have been discovered.

#### 57.09. Subpoena for Taking Deposition

(a) For Attendance of Witnesses; Form; Issuance. Every subpoena for a deposition shall:

- (1) Be issued by the officer or person before whom depositions may be taken as designated in Rule 57.05 or Rule 57.06 or by the clerk of the court in which the civil action is pending;
- (2) State the name of the court and the style of the civil action;
- (3) State the name, address and telephone number of all attorneys of record and self-represented parties; and

(4) Command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(b) For Production of Documents and Things. In conjunction with a deposition properly noticed under Rule 57.03, a subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.



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The court may:

- (1) Quash or modify the subpoena if it is unreasonable or oppressive, or
- (2) Require the party who issued and served the subpoena to advance the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Subpoena to a Non-Party. A subpoena to a non-party pursuant to Rule 57.09 for the production of documents and things shall be served not fewer than 10 days before the time specified for compliance. The party serving a subpoena on a non-party shall provide a copy of the subpoena to every party as if it were a pleading. A party objecting to the subpoena may seek a protective order under Rule 56.01(c).

A party or attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a non-party subject to the subpoena.

With the agreement of all parties, the non-party may be excused from appearance at the deposition and may produce the subpoenaed items to the party responsible for issuance and service of the subpoena, who shall then offer to all other parties the opportunity to inspect or copy the subpoenaed items. The party responsible for issuance and service of the subpoena is responsible for obtaining the agreement of all parties and advising the non-party in writing of the agreement, with a copy to all attorneys of record and self-represented parties. Absent such an agreement, the subpoenaed items shall only be produced at the deposition.

Upon request by any party, the non-party shall also produce with the subpoenaed items a business records affidavit of the custodian of records.

A non-party commanded to produce and permit inspection and copying may serve the party who issued and served the subpoena with a written objection to inspection and copying of any or all of the designated items. The objection shall state specific reasons why the subpoena should be quashed or modified.

The objection shall be served on all parties to the action within 10 days after service of the subpoena or before the time specified for compliance, whichever is earlier.

If a timely and specific objection is made, the party who issued and served the subpoena shall not be entitled to inspect or copy the subpoenaed items except pursuant to an order of the court.

Upon notice to the non-party commanded to produce, the party who issued and served the subpoena may move at any time for an order to compel production.



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(d) Service. A subpoena may be served by:

- (1) The sheriff or a sheriff's deputy, or
- (2) Any other person who is not a party and is not less than 18 years of age.

Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to that person the fees and mileage the witness would have been entitled to receive for attending court pursuant to subpoena.

(e) Authorization to Issue Subpoena. Proof of service of a notice to take a deposition as provided in Rules 57.03 and 57.04 is sufficient to authorize the issuance of a subpoena for taking a deposition.

(f) Contempt. Any person who without adequate excuse fails to obey a subpoena served upon the person may be held in contempt of the court in which the civil action is pending.

#### 57.10. Taxing and Certifying Costs

(a) Costs - How Taxed. The costs of taking depositions shall be taxed in favor of the party paying the same and taxed as other costs in the civil action.

(b) Costs - How Certified and Taxed. The costs shall be certified by the person before whom the deposition is taken in the amount provided by law.

#### 58.01. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Scope. Any party may serve on any other party a request to:

- (1) Produce and permit the party making the request, or someone acting on the requesting party's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phonograph records, electronic records, and other data compilations from which information can be obtained, translated, if necessary, by the requesting party through detection devices into reasonably usable form) or to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of Rule 56.01(b) and that are in the possession, custody or control of the party upon whom the request is served; or
- (2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, and photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 56.01(b).



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This Rule 58.01 does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

(b) Issuance.

(1) Form. In consecutively numbered paragraphs the request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts. The title shall identify the party to whom the requests are directed and state the number of the set of requests directed to that party.

(2) When Requests May be Served. Without leave of court, requests may be served on:

- (A) A plaintiff after commencement of the action, and
- (B) Any other party with or after the party was served with process, entered an appearance, or filed a pleading.

(3) Service. Copies of the requests shall be served on all parties not in default. The party issuing the requests shall also provide each responding party an electronic copy in a commonly used medium, such as a diskette, CD-ROM or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state the:

- (A) Name of each party who is to respond to the requests;
- (B) Number of the set of requests,
- (C) Format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the requests, shall be filed with the court as provided in Rule 58.01(d).

(c) Response. The requests shall be answered by each party to whom they are directed.

(1) When Response is Due. Responses shall be served within 30 days after the service of the request. A defendant, however, shall not be required to respond to the request before the expiration of 45 days after the earlier of:

- (A) The date the defendant enters an appearance, or
- (B) The date the defendant is served with process.

The court may allow a shorter or longer time.

(2) Form. The title of the response shall identify the responding party and the number of the set of the requests. The response shall quote each request, including its original paragraph number, and immediately thereunder state that the requested items will be produced or the inspection and related activities will be permitted as



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requested, unless the request is objected to, in which event each reason for objection shall be stated in detail.

(3) Objections and Privileges. If information is withheld because of an objection, then each reason for the objection shall be stated. If a privilege or the work product doctrine is asserted as a reason for the objection, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) Method of Production. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(5) Signing. The response shall be signed by the attorney or by the party if the party is not represented by an attorney.

(6) Service. The party to whom the requests were directed shall serve a signed original of the response and objections, if any, on the party that issued the requests and a copy upon all parties not in default. The certificate of service shall state the name of the party who issued the requests and the number of the set of requests. At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in Rule 58.01(d).

(d) Filing. The request and responses thereto shall not be filed with the court except upon court order or contemporaneously with a motion placing the request in issue. However, both when the request and responses are served, the party serving them shall file with the court a certificate of service. The certificate shall show the caption of the case, the name of the party served, the date and manner of service, and the signature of the serving party or attorney. Each party filing a certificate shall maintain a copy of the document that is the subject of the certificate until the case is finally disposed.

(e) Enforcement. The party submitting the request may move for an order under Rule 61.01(d) with respect to any objection or other failure to respond to the request or any part thereof or any failure to permit inspection as requested.

### 58.02 SUBPOENA TO NON-PARTY FOR PRODUCTION OF DOCUMENTS AND THINGS

(a) Scope. A party may serve a subpoena on a non-party to:

- (1) Produce and permit inspection and copying of any designated documents, or
- (2) Permit inspection, copying testing, or sampling of any tangible things that constitute or contain matters within the scope of Rule 56.01(b) and that are in the possession, custody or control of the non-party.

(3) Every such subpoena for document production and things shall:

- (A) Be issued by the clerk of the court in which the civil action is pending;





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- (B) State the name of the court and they style of the civil action;
- (C) State the name, address, and telephone number of all attorneys of record and self-represented parties.

(b) Time. A subpoena to a non-party shall be served not fewer than 10 days before the time specified for compliance.

(c) Notice to Parties. The party serving a subpoena on a non-party pursuant to Rule 58.02(a) shall provide a copy of the subpoena to every party as if it were a pleading. A party objecting to the subpoena may seek a protective order under Rule 56.01(c).

(d) Response. With the agreement of all parties, the non-party may be excused from appearance at the location specified for document production and may produce the subpoenaed items to the party responsible for issuance and service of the subpoena, who shall then offer to all other parties the opportunity to inspect or copy the subpoenaed items. The party responsible for issuance and service of the subpoena is responsible for obtaining the agreement of all parties and advising the non-party in writing of the agreement, with a copy to all attorneys of record and self-represented parties. Absent such an agreement, the subpoenaed items shall only be produced at the place, date and time specified by the subpoena for all parties to inspect or copy.

Upon request by any party, the non-party shall also produce with the subpoenaed items a business records affidavit of the custodian of records.

(e) Protection of Non-Party.

(1) A party or attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a non-party subject to the subpoena.

(2) A non-party commanded to produce and permit inspection and copying may serve the party who issued and served the subpoena with a written objection to inspection and copying of any or all of the designated items. The objection shall state specific reasons why the subpoena should be quashed or modified. The objection shall be served on all parties to the action within 10 days after service of the subpoena or before the time specified for compliance, whichever is earlier.

(3) If a timely and specific objection is made, the party who issued and served the subpoena shall not be entitled to inspect or copy the subpoenaed items except pursuant to an order of the court.

(f) Contempt. Any person who without adequate excuse fails to obey a subpoena served upon the person may be held in contempt of the court in which the civil action is pending.



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#### 59.01. Request for and Effect of Admissions

(a) Scope. After commencement of an action, a party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 56.01(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.

A failure to timely respond to requests for admissions in compliance with this Rule 59.01 shall result in each matter being admitted.

The request for admissions shall have included at the beginning of said request the following language in all capital letters, boldface type, and a character size that is as large as the largest character size of any other material in the request:

**"A FAILURE TO TIMELY RESPOND TO REQUESTS FOR ADMISSIONS IN COMPLIANCE WITH RULE 59.01 SHALL RESULT IN EACH MATTER BEING ADMITTED BY YOU AND NOT SUBJECT TO FURTHER DISPUTE."**

(b) Effect of Admission. Any matter admitted under this Rule 59.01 is conclusively established unless the court on motion permits withdrawal or amendment of the admission.

Subject to the provisions of Rule 62.01 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits.

Any admission made by a party under this Rule 59.01 is for the purpose of the pending action only and is not an admission by the party for any other purpose nor may it be used against the party in any other proceeding.

(c) Issuance.

(1) Form. In consecutively numbered paragraphs, the request shall set forth each matter for which an admission is requested. Copies of documents about which admissions are requested shall be served with the request unless copies have already been furnished. The title shall identify the party to whom the request for admissions are directed and state the number of the set of requests directed to that party.

(2) When Requests May be Served. Without leave of court, requests may be served on:



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- (A) A plaintiff after commencement of the action,
  - (B) A defendant or respondent upon the expiration of 30 days after the first event of the defendant entering an appearance or being served with process, and
  - (C) Any other party with or after the party was served with process, entered an appearance, or filed a pleading.
- (3) Service. Copies of the requests shall be served on all parties not in default. The party issuing the requests shall also provide each responding party an electronic copy in a commonly used medium, such as a diskette, CD-ROM or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state the:
- (A) Name of each party who is to respond to the requests;
  - (B) Number of the set of requests,
  - (C) Format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the requests, shall be filed with the court as provided in Rule 59.01(d).

- (d) Response. The requests shall be answered by each party to whom they are directed.
- (1) When Response is Due. Responses shall be served within 30 days after the service of the requests for admissions. A defendant or respondent, however, shall not be required to respond to requests for admissions before the expiration of 60 days after the earlier of the defendant:
- (A) Entering an appearance, or
  - (B) Being served with process.
- The court may allow a shorter or longer time.
- (2) Form. The title of the response shall identify the responding party and the number of the set of the requests for admissions. The response shall quote each request, including its original paragraph number, and immediately thereunder specifically:
- (A) Admit the matter; or
  - (B) Deny the matter; or
  - (C) Object to the matter and state each reason for the objection; or
  - (D) Set forth in detail the reasons why the responding party cannot truthfully admit or deny the matter.

A denial shall fairly meet the substance of the requested admission.



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When good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as true and qualify or deny the remainder.

A responding party may give lack of information or knowledge as a reason for failure to admit or deny if such party states that the party has made reasonable inquiry and the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.

A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; such party may deny the matter, subject to the provisions of Rule 61.01(c), or set forth reasons why the party cannot admit or deny it.

(3) Objections and Privileges. If an objection is asserted, then each reason for the objection shall be stated. If a failure to admit or deny a request is based on a privilege or the work product doctrine, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) Signing. The response shall be signed by the party or the party's attorney.

(5) Service. The party to whom the requests were directed shall serve a signed original of the response and objections, if any, on the party that issued the requests and a copy upon all parties not in default. The certificate of service shall state the name of the party who issued the requests and the number of the set of requests. At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in Rule 59.01(d).

(e) Filing Request and Responses. The request and response thereto shall not be filed with the court except upon court order or contemporaneously with a motion placing the request in issue. However, both when the request and the response are served the party serving them shall file with the court a certificate of service. Each party filing a certificate shall maintain a copy of the document that is the subject of the certificate until the case is finally disposed.

(f) Enforcement. The party who has requested the admissions may move to have determined the sufficiency of the answers or objections. Unless the court determines that an objection is proper, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule 59.01, it may order either that:

- (1) The matter is admitted, or
- (2) An amended answer be served.

The provisions of Rule 61.01(c) apply to the award of expenses incurred in relation to the motion.



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### Sample Commercial Order

#### STATE TAX COMMISSION OF MISSOURI

COMPANY	)	Appeal No.
	)	Parcel/locator No.
Complainant,	)	
	)	
v.	)	
	)	
ASSESSOR,	)	
MISSOURI,	)	
	)	
Respondent.	)	

#### **ORDER ON FILING OF COMPLAINT, ASSIGNING HEARING OFFICER, REQUIRING GOOD FAITH MEETING, AND SETTING DISCOVERY AND HEARING SCHEDULE**

The State Tax Commission of Missouri has received a Complaint for Review of Assessment for the above referenced appeal. An appeal number has been assigned. Parties are requested to include the appeal number and parcel/locator number on any filings or communications.

Hearing Officer \_\_\_\_\_ has been assigned to the appeal. The State Tax Commission will send notification to the Collector so that any taxes paid will be impounded pending disposition of the appeal.

The Commission sets the following schedule and procedure:

1. **Good Faith Meeting.** The parties are required to meet in person or by telephone, in good faith, no later than \_\_\_\_\_, to attempt to resolve the appeals. It is presumed that **both Complainant's Counsel and Counsel for Respondent** will be in possession of facts and/or documents sufficient to allow effective discussion of the parties and to identify the issues in the appeals, to simplify the issues, and to discuss all other matters that may aid in the disposition of the case.

2. **Disclosures and Exchange of Exhibits to be Used in Appeals (Read Carefully).** If there is no resolution of all of the appeals at the Good Faith Meeting, the parties should adhere to the following schedule:

DISCOVERY AND EXCHANGE SCHEDULE	
	Date Due
Good Faith Meeting	
Complainant's Written Certification to Prosecute Appeal	



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Initial Disclosures by Both Parties	
Simultaneous Filing and Exchange of Exhibits and Written Direct Testimony and Expert Disclosures	
Objections and Rebuttal Evidence	
Responses to Objections and Surrebuttal Evidence	
Evidentiary Hearing at X	

### **DISCOVERY – DISCLOSURES**

1. **Initial Disclosures.** Except as otherwise ordered, a party must, without awaiting a discovery request, provide to the other parties:

- (i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses;
- (ii) a copy of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses.

2. **Time for Initial Disclosures.** A party must make the initial disclosures no later than the due date provided by the schedule.

3. **Disclosure of Expert Testimony.** In addition to the disclosures above, a party must disclose to the other parties the identity of any witness the party may use at Evidentiary Hearing to present evidence as an expert witness and any report that may be presented as evidence at Evidentiary Hearing.

4. **Time for Expert Disclosures.** A party must make the expert disclosures **within thirty (30) days of an expert report being generated** by any witness the party may use at Evidentiary Hearing to present evidence as an expert witness **or no later than the date in the schedule, whichever occurs first.**

5. **Other Discovery.** In addition to the foregoing, the parties are free to participate in any additional discovery allowable under the Missouri Rules of Civil Procedure.

### **DISCOVERY – EXHIBITS AND WRITTEN DIRECT TESTIMONY**

#### **Exchange Procedure**

1. **Exhibits.** Each party shall file with the Commission the original of all exhibits to be used in their case in chief and serve a copy upon opposing counsel. Complainant's exhibits shall be marked with letters beginning with the letter A, with the appeal number. Respondent's exhibits shall be marked with numbers beginning with the number 1, with the appeal number.

Exhibits filed with and retained by the Commission should be no larger than 8½ by 11 inches, (*standard appraisal forms on 8½ by 14 inch pages are permitted*) although for purposes of demonstration at the hearing, the parties may use larger copies of the submitted exhibits. Exhibits which consist of photographs shall be affixed to or copied on 8½ by 11 inch paper, and each photograph shall be identified in a brief statement or phrase on the face of the exhibit. More than one photograph may be placed on one page, if space so permits to identify each photograph.

2. **Written Direct Testimony.** Each party shall file with the Commission the original



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of written direct testimony of each witness expected to be called for the party's case in chief and serve a copy upon opposing counsel. Written direct testimony shall be in a question and answer form with each question numbered sequentially, typed on 8½ by 11 inch paper, with pages numbered. Written direct testimony must be as complete and accurate as if it were oral testimony.

3. Objections and Rebuttal Exhibits. Objections to opposing party's introduction of exhibits and written direct testimony and rebuttal exhibits shall be filed with the Commission. A copy of said objections and/or exhibits shall be served upon opposing counsel.

4. Responses to Objections and Surrebuttal Exhibits. Responses to objections and surrebuttal exhibits shall be filed with the Commission. A copy of said responses to objections and/or surrebuttal exhibits shall be served upon opposing counsel.

5. Addresses for Filing and Serving Exhibits:

A. Exhibits filed with the Commission shall be mailed to: *Missouri State Tax Commission, Legal Section, 301 W. High Street, Room 840, P.O. Box 146, Jefferson City, MO 65102-0146*

B. The parties may serve their filings to the other party at the mailing address of record.

C. The parties may serve their filings to the Commission and to the other party by use of electronic mail (email).

6. Sanctions. Upon finding that a party has willfully failed to comply with this order, including, but not limited to failing to serve a copy of documents upon opposing party/counsel or to timely supplement those documents, sanctions may be imposed which may include exclusion of the offending party's evidence or dismissal of the appeal. Rule 61.01; Section 138.431 RSMo; Section 536.075 RSMo.

7. Duty to Timely Supplement. Each party shall supplement any and all discovery and disclosures in a timely fashion, i.e., as soon as the party becomes aware of the additional evidence/exhibits. Waiting to bring additional and new evidence/exhibits on or about the date of hearing will not be looked upon favorably.

8. Motions for Continuance. Parties are expected to proceed in an expeditious manner to comply with the deadlines set herein. Motions for continuance are discouraged and will not be looked upon favorably. **The fact parties are engaged in settlement negotiations is not good cause for continuance of the discovery schedule.** Parties are in no way prevented from pursuing settlement while conducting discovery. If a motion for continuance must be filed, it is to be filed not less than five days before the date specified for the event which stands to be affected by the motion, **not including intermediate Saturdays, Sundays and legal holidays.** Rule 61.01.

SO ORDERED x

STATE TAX COMMISSION OF MISSOURI

Hearing Officer



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### Sample Residential Order – Prehearing Conference STATE TAX COMMISSION OF MISSOURI

TAXPAYER	) Appeal No.
	) Parcel/locator No.
Complainant,	)
	)
v.	)
	)
ASSESSOR,	)
MISSOURI,	)
	)
Respondent.	)

### **ORDER ON FILING OF COMPLAINT, ASSIGNING HEARING OFFICER, AND REQUIRING PREHEARING CONFERENCE**

The State Tax Commission of Missouri has received a Complaint for Review of Assessment. An appeal number has been assigned. Parties are requested to include the appeal number and parcel/locator number on any filings or communications.

Hearing Officer x has been assigned to the appeal. The State Tax Commission will send notification to the Collector so that any taxes paid will be impounded pending disposition of the appeals.

The Commission sets the following schedule and procedure:

**1. Prehearing Conference. Before an Evidentiary Hearing will be scheduled in these appeals, the parties are required to meet in person, in good faith, at a Prehearing Conference with the Hearing Officer on X., at the X.** At the Prehearing Conference, **BOTH** of the parties shall be prepared to discuss the simplification of the issues and all other matters that may aid in the disposition of the cases. **BOTH** parties should present and exchange information and documentation on the issue of fair market value of the properties during the Prehearing Conference. If the parties resolve the appeals, no additional proceedings will be necessary. If the parties fail to resolve the appeals, the Hearing Officer will discuss the next steps in the process. However, the Hearing Officer will *not* be hearing testimony or taking evidence of value during the meeting with the parties. The Hearing Officer will *not* be providing legal advice to either party.

**Failure to appear at the Prehearing Conference may result in dismissal of the appeal(s) for failure to prosecute.**

**2. Evidentiary Hearing.** If there is no resolution of the appeals at the Prehearing Conference, the Hearing Officer will schedule the appeal for an Evidentiary Hearing, date and time to be determined, at the St. Louis County Government Administration Building, 41 South





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Central Avenue, Clayton, Missouri.

***\*\*Please read all of the information contained in this Order.\*\****

#### **The Role of the Hearing Officer**

The Hearing Officer is employed by the State of Missouri, not the county or Respondent. The Hearing Officer is impartial and decides the outcome of the appeal. Any communication between Complainant or Respondent and the Hearing Officer must be copied to the other party. For example, if Complainant contacts the Hearing Officer by email to ask a question about the Evidentiary Hearing, Complainant must copy Respondent on the email. The same rule applies to Respondent. The Hearing Officer may answer general questions about the manner in which the Evidentiary Hearing will be conducted but is not allowed to provide legal advice to either party.

#### **Being Prepared for the Evidentiary Hearing**

All parties are reminded the Evidentiary Hearing is a legal proceeding, and the fundamental rules of evidence apply. For example, evidence that is hearsay or that is based on an improper factual foundation will not be received into the record. The parties should make every effort to be prepared to present the case at the time of the Evidentiary Hearing.

Complainant should be aware that, under Missouri law, it is presumed that the Board of Equalization's determination of true market value of the property is correct. This means that Complainant bears the initial burden of proof in the appeal. In other words, to prove his or her opinion of the true market value of the property should be adopted over the Board of Equalization's value, Complainant must present substantial and persuasive evidence to support Complainant's opinion of value. Complainant may visit <https://stc.mo.gov/legal-decisions/> and select a search term such as "overvaluation," "discrimination," or "misclassification," to learn more about the type of evidence that is presented in appeals before the STC.

PLEASE NOTE: An individual may represent himself or herself at the hearing if he or she owns the property subject to appeal. If the property is owned or held by another person or a legal entity (your relative; a trust; a corporation, partnership, or other business), a licensed attorney must enter an appearance with the State Tax Commission prior to the hearing and must present Complainant's evidence at the hearing. NO EXCEPTIONS.

#### **Exhibits at the Evidentiary Hearing**

Complainant and Respondent *must* bring at least three copies of any documents which will be introduced into evidence at the evidentiary hearing that will support the party's opinion of value. One copy is for the Hearing Officer; one copy is for the opposing party; and one copy is for the party to retain. Exhibits should be no larger than 8½ by 11 inches in size; however, larger copies of the exhibits can be used for purposes of demonstration at the hearing. Exhibits which consist of photographs must be affixed to or copied on 8½ by 11 inch paper, and each photograph must be identified in a brief statement or phrase on the face of the exhibit. More than one photograph may be placed on one page, if space so permits to identify each photograph. If you are presenting an appraisal report from a Missouri Certified Appraiser as evidence, the appraiser MUST be present to testify and to be cross-examined. If the appraiser is not present at the Evidentiary Hearing, the appraisal report cannot be received into evidence.

Complainant's exhibits must be marked with letters in sequence beginning with the letter



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A, i.e. Exhibit A, Exhibit B etc., with the appeal number. Respondent's exhibits must be marked with numbers in sequence beginning with the number 1, i.e. Exhibit 1, Exhibit 2, etc., with the appeal number.

#### **Testimony at the Evidentiary Hearing**

The hearing will be audio recorded. At the start of the hearing, the Hearing Officer will read information to identify the appeal and the exhibits being offered. The Hearing Officer will then swear in Complainant so that Complainant may testify under oath. First, the Hearing Officer will ask Complainant a series of questions to establish the basic facts of the case. Second, Complainant will be asked to provide his or her opinion of the true market value of the property. Complainant will be given the opportunity to present his or her exhibits and explain how the exhibits support his or her opinion of true market value. Third, Respondent will have an opportunity to cross-examine Complainant regarding his or her opinion of true market value and regarding Complainant's exhibits. If Complainant brings witnesses, the Hearing Officer will swear in each witness, and Complainant will be allowed to ask questions of the witnesses. Respondent will have an opportunity to cross-examine Complainant's witnesses.

Once Complainant has completed the presentation of his or her evidence, Respondent will be given the opportunity to present evidence, if he or she has any. Keep in mind that Respondent does not have the burden of proof and is not required to present evidence. If Respondent does present evidence, it will be presented in the same manner as Complainant's. Complainant will have an opportunity to cross-examine Respondent and any witnesses who testify for Respondent.

At the end of the hearing, the Hearing Officer will make some final statements and stop the audio-recording. A decision will not be issued immediately.

#### **What Happens Next?**

After the hearing, a written decision by the Hearing Officer will be sent to you by email.<sup>1</sup> The decision also will be published on the State Tax Commission website at <https://stc.mo.gov>. It is possible that the Hearing Officer will determine that the assessment should remain the same, should be lowered, or should be raised, depending upon the particular circumstances and the evidence. If either party disagrees with the decision, the party will have 30 days from the date the decision was issued to file an Application for Review with the three-member State Tax Commission. Following a decision by the Commission, if either party disagrees with that decision, the party will have 30 days from the date of the decision to appeal to the circuit court of the county in which the property is located.

#### **Continuances**

If you cannot attend the scheduled Prehearing Conference and need a continuance, you must put your request in **writing** and give the reason why it is necessary to reschedule the hearing. Your request for continuance must be received by the State Tax Commission Legal Section at P.O. Box 146, Jefferson City, MO 65102-0146, or by email at [Legal@stc.mo.gov](mailto:Legal@stc.mo.gov) no

<sup>1</sup> To preserve resources for the taxpayers of Missouri, the State Tax Commission utilizes electronic communication when possible. If you do not have access to email, please inform the Hearing Officer that you will need a copy of the decision sent by U.S. Mail.



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*later than five (5) days before the date of conference, **not including intermediate Saturdays, Sundays and legal holidays.***<sup>2</sup> If Complainant does not appear at the conference and no timely request for continuance is made, the appeal will be dismissed for failure to prosecute.

SO ORDERED X.  
STATE TAX COMMISSION OF MISSOURI

Hearing Officer

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<sup>2</sup> Missouri Rule of Civil Procedure 44.01(a)



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**STATE TAX COMMISSION OF MISSOURI  
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**Sample Residential Order – NO Prehearing Conference  
STATE TAX COMMISSION OF MISSOURI**

TAXPAYER,	)	
	)	
Complainants,	)	
	)	
v.	)	Appeal No.
	)	Parcel/Locator No.
ASSESSOR,	)	
COUNTY, MISSOURI,	)	
Respondent		

**ORDER ASSIGNING HEARING OFFICER  
AND SETTING DATE FOR EVIDENTIARY HEARING**

The State Tax Commission of Missouri has received a Complaint for Review of Assessment. An appeal number has been assigned (see above). The parties are requested to reference the appeal number on any filings or communications. Hearing Officer X has been assigned to the appeal for disposition. The State Tax Commission will send notification to the Collector so that any taxes paid will be impounded pending disposition of the appeal.

The Evidentiary Hearing in this appeal will be held **at x** Respondent is requested to arrange for a suitable room in which to conduct the hearing and to notify Complainant and the Commission of its location. **At least 30 days before the date of the Evidentiary Hearing**, the parties should meet in person or confer by telephone, in good faith, to attempt to resolve the appeal. If the appeal is not resolved, the parties should be prepared to meet with the Hearing Officer on the date of the Evidentiary Hearing.

***\*\*Please read all of the information contained in this Order.\*\****



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#### **The Role of the Hearing Officer**

The Hearing Officer is employed by the State of Missouri, not the county or Respondent.

The Hearing Officer is impartial and decides the outcome of the appeal. Any communication between Complainant or Respondent and the Hearing Officer must be copied to the other party. For example, if Complainant contacts the Hearing Officer by email to ask a question about the Evidentiary Hearing, Complainant must copy Respondent on the email. The same rule applies to Respondent. The Hearing Officer may answer general questions about the manner in which the Evidentiary Hearing will be conducted but is not allowed to provide legal advice to either party.

#### **Being Prepared for the Evidentiary Hearing**

All parties are reminded the Evidentiary Hearing is a legal proceeding, and the fundamental rules of evidence apply. For example, evidence that is hearsay or that is based on an improper factual foundation will not be received into the record. The parties should make every effort to be prepared to present the case at the time of the Evidentiary Hearing.

Complainant should be aware that, under Missouri law, it is presumed that the Board of Equalization's determination of true market value of the property is correct. This means that Complainant bears the initial burden of proof in the appeal. In other words, to prove his or her opinion of the true market value of the property should be adopted over the Board of Equalization's value, Complainant must present substantial and persuasive evidence to support Complainant's opinion of value. Complainant may visit <https://stc.mo.gov/legal-decisions/> and select a search term such as "overvaluation," "discrimination," or "misclassification," to learn more about the type of evidence that is presented in appeals before the STC.



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PLEASE NOTE: An individual may represent himself or herself at the hearing if he or she owns the property subject to appeal. If the property is owned or held by another person or a legal entity (your relative; a trust; a corporation, partnership, or other business), a licensed attorney must enter an appearance with the State Tax Commission prior to the hearing and must present Complainant's evidence at the hearing. NO EXCEPTIONS.

#### **Exhibits at the Evidentiary Hearing**

Complainant and Respondent *must* bring at least three copies of any documents which will be introduced into evidence at the evidentiary hearing that will support the party's opinion of value. One copy is for the Hearing Officer; one copy is for the opposing party; and one copy is for the party to retain. Exhibits should be no larger than 8½ by 11 inches in size; however, larger copies of the exhibits can be used for purposes of demonstration at the hearing. Exhibits which consist of photographs must be affixed to or copied on 8½ by 11 inch paper, and each photograph must be identified in a brief statement or phrase on the face of the exhibit. More than one photograph may be placed on one page, if space so permits to identify each photograph. If you are presenting an appraisal report from a Missouri Certified Appraiser as evidence, the appraiser MUST be present to testify and to be cross-examined. If the appraiser is not present at the Evidentiary Hearing, the appraisal report cannot be received into evidence.

Complainant's exhibits must be marked with letters in sequence beginning with the letter A, i.e. Exhibit A, Exhibit B etc., with the appeal number. Respondent's exhibits must be marked with numbers in sequence beginning with the number 1, i.e. Exhibit 1, Exhibit 2, etc., with the appeal number.



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#### **Testimony at the Evidentiary Hearing**

The hearing will be audio recorded. At the start of the hearing, the Hearing Officer will read information to identify the appeal and the exhibits being offered. The Hearing Officer will then swear in Complainant so that Complainant may testify under oath. First, the Hearing Officer will ask Complainant a series of questions to establish the basic facts of the case. Second, Complainant will be asked to provide his or her opinion of the true market value of the property. Complainant will be given the opportunity to present his or her exhibits and explain how the exhibits support his or her opinion of true market value. Third, Respondent will have an opportunity to cross-examine Complainant regarding his or her opinion of true market value and regarding Complainant's exhibits. If Complainant brings witnesses, the Hearing Officer will swear in each witness, and Complainant will be allowed to ask questions of the witnesses. Respondent will have an opportunity to cross-examine Complainant's witnesses.

Once Complainant has completed the presentation of his or her evidence, Respondent will be given the opportunity to present evidence, if he or she has any. Keep in mind that Respondent does not have the burden of proof and is not required to present evidence. If Respondent does present evidence, it will be presented in the same manner as Complainant's. Complainant will have an opportunity to cross-examine Respondent and any witnesses who testify for Respondent.

At the end of the hearing, the Hearing Officer will make some final statements and stop the audio-recording. A decision will not be issued immediately.

If you cannot attend the scheduled Evidentiary Hearing and need a continuance, you must



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put your request in **writing** and give the reason why it is necessary to reschedule the hearing.

Your request for continuance must be received by the State Tax Commission Legal Section at P.O. Box 146, Jefferson City, MO 65102-0146, or by email at [Legal@stc.mo.gov](mailto:Legal@stc.mo.gov) *no later than five (5) days before the date of hearing, **not including intermediate Saturdays, Sundays and legal holidays.***<sup>3</sup> If you do not appear at the hearing and no timely request for continuance is

made, your appeal will be dismissed for failure to prosecute.

#### **What Happens Next?**

After the hearing, a written decision by the Hearing Officer will be sent to you by email.<sup>4</sup>

The decision also will be published on the State Tax Commission website at <https://stc.mo.gov>.

It is possible that the Hearing Officer will determine that the assessment should remain the same, should be lowered, or should be raised, depending upon the particular circumstances and the evidence. If either party disagrees with the decision, the party will have 30 days from the date the decision was issued to file an Application for Review with the three-member State Tax Commission. Following a decision by the Commission, if either party disagrees with that decision, the party will have 30 days from the date of the decision to appeal to the circuit court of the county in which the property is located.

SO ORDERED x

STATE TAX COMMISSION OF MISSOURI

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<sup>3</sup> Missouri Rule of Civil Procedure 44.01(a)

<sup>4</sup> To preserve resources for the taxpayers of Missouri, the State Tax Commission utilizes electronic communication when possible. If you do not have access to email, please inform the Hearing Officer that you will need a copy of the decision sent by U.S. Mail.





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### Sample Automobile

TAXPAYER	)	Appeal No.
	)	Account No.
Complainant,	)	
	)	
v.	)	
	)	
ASSESSOR,	)	
MISSOURI,	)	
	)	
Respondent.	)	

### **ORDER ASSIGNING HEARING OFFICER AND SETTING DISCOVERY AND EXHIBIT EXCHANGESCHEDULE AND PROCEDURE**

The State Tax Commission of Missouri has received a Complaint for Review of Assessment. An appeal number has been assigned. Parties are requested to reference the appeal number on any filings or communications.

Please note: Property taxes must be paid timely even if an appeal is pending. In accordance with the provisions of Sections 138.430 and 139.031.3 RSMo, the State Tax Commission will send notice of your appeal to the collector so that the taxes which you are disputing will be escrowed.

### **Hearing Officer**

Hearing Officer X has been assigned to the appeal for disposition. The Hearing Officer is employed by the State of Missouri, not the county or Respondent. The Hearing Officer is impartial and decides the outcome of the appeal. Any communication between Complainant or Respondent and the Hearing Officer must be copied to the other party. For example, if



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Complainant contacts the Hearing Officer by email to ask a question about the Evidentiary Hearing, Complainant must copy Respondent on the email. The same rule applies to Respondent. The Hearing Officer may answer general questions about the manner in which the Evidentiary Hearing will be conducted but is not allowed to provide legal advice to either party.

### Valuation of Vehicles

Complaint should be aware that, under Missouri law, the assessor shall use the trade-in value published in the October, prior to the valuation date of January 1, issue of the National Automobile Dealers' Association Official Used Car Guide, or its successor publication, as the recommended guide of information for determining the true value of motor vehicles described in such publication.

### Evidence Exchange

1. Complainant must present substantial and persuasive evidence to support Complainant's opinion of value. On or before **X**, Complainant shall file with the Commission the original of all exhibits to be used in his case in chief, including a brief Statement of Basis of Value setting forth the Complainant's opinion of value of the vehicle under appeal as of January 1, \_\_\_\_, and the basis for that opinion **and serve a copy upon opposing party/counsel**. In the event copies of documents were filed with Complainant(s) "Complaint For Review Of Assessment", Complainant(s) shall again file such documents specifically as exhibits and marked appropriately and serve a copy upon opposing party/counsel. Complainant's exhibits shall be marked with letters in sequence, i.e. Exhibit A, Exhibit B, etc.

Complainant should consider filing the following information with their Statement of Basis of Value:



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- a) How often each vehicle is driven.
- b) The odometer reading of each vehicle.
- c) A description of each vehicle, including:
  - a. The exterior of the vehicle
  - b. The interior of the vehicle
  - c. The mechanical condition of the vehicle,
  - d. The year of the vehicle.
  - e. The make of the vehicle.
  - f. The model of the vehicle.
- d) At least four (4) pictures of the exterior of each vehicle, with at least one (1) each from the front, driver's side, rear and passenger side.
- e) At least four (4) pictures of the interior of each vehicle, with at least one (1) each of the front drivers side, front passenger side, rear drivers side and rear passenger side.

2. Respondent's Exhibits and Statement of Basis of Value: On or before

\_\_\_\_\_, Respondent shall file with the Commission the original of all exhibits to be used in his case in chief, including a brief Statement of Basis of Value setting forth the Respondent's opinion of value of the property under appeal as of January 1, \_\_\_\_, and the basis for that opinion, **and serve a copy upon opposing party/counsel** of the Exhibits and Statement of Basis of Value. Respondent's exhibits shall be marked with numbers in sequence, i.e. Exhibit 1, Exhibit 2, *etc.*

3. Form of Exhibits: Exhibits filed with the Commission should be no larger than 8½ by 11 inches. Exhibits which consist of photographs shall be affixed to or copied on 8½ by 11 inch paper, and each photograph shall be identified in a brief statement or descriptive phrase on the face of the exhibit. More than one photograph may be placed on one page, if space so permits to identify each photograph and provide the descriptive statement. The Statement of Basis of Value should be typewritten, but if hand-written must be **legibly printed**.



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4. Addresses for Filing and Serving Exhibits and Statements of Value, Etc.
  - A. Exhibits and Written Direct Testimony filed with the Commission shall be mailed to: ***Missouri State Tax Commission, Legal Section, 301 W. High Street, Room 840, P. O. Box 146, Jefferson City, MO 65102-0146***
  - B. Exhibits and Written Direct Testimony served upon Respondent and/or Respondent's attorney shall be mailed to or delivered to: **X**
  - C. Exhibits and Written Direct Testimony served upon Complainant shall be mailed to the Complainant at: **X**

5. Sanctions. Upon finding that a party has willfully failed to comply with this order, including, but not limited to failing to serve a copy of documents or direct written testimony upon opposing party/counsel, sanctions may be imposed which may include exclusion of the offending party's evidence or dismissal of the appeal. Rule 61.01; Section 138.431 RSMo; Section 536.075 RSMo.

6. Settlement Conferences. The Parties may engage in prehearing conferences and settlement discussions. Parties are ordered to notify the State Tax Commission in writing if they reach a stipulation of value or determine that they no longer wish to pursue the appeal.

7. Motions for Continuance. Parties are expected to proceed in an expeditious manner to comply with the deadlines set herein. Motions for continuance will not be looked on with favor. **The fact parties are engaged in settlement negotiations is not good cause for continuance of the discovery schedule.** Parties are in no way prevented from pursuing settlement while conducting discovery. Parties will have ample time when discovery is completed to settle the case without the need for exchange of exhibits and written direct testimony. A motion for continuance is to be filed not less than five days before the date specified for the event which stands to be affected by the motion, **not including intermediate**



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**Saturdays, Sundays and legal holidays.**<sup>5</sup>

**Evidentiary Hearing**

On or before \_\_\_\_\_, each party is to inform the Hearing Officer in writing if the party desires to have an evidentiary hearing in the case or if the party is willing to have the appeal decided based upon the submission of exhibits as herein ordered in lieu of an evidentiary hearing.

Any party failing to respond as ordered will be deemed to have consented to a decision being rendered based upon the exhibits submitted by each party, and waived that party's right to an evidentiary hearing.

SO ORDERED \_\_\_\_\_, 20\_\_.

STATE TAX COMMISSION OF MISSOURI

Hearing Officer

**4. Appeal to the Full Commission and Judicial Review**

The taxpayer or the assessor may file with the Commission an Application for Review by the full Commission within 30 days of the date of notification or mailing of the hearing officer decision. The Commission may affirm, modify, or overturn the decision of the hearing officer. The parties have 30 days after the decision by the full Commission to appeal to circuit court.

Note: The Application for Review is a necessary step in the appeal process. If a party fails to file a timely Application for Review, his or her administrative remedies have not been exhausted, and an appeal to circuit court cannot be made.

As was previously stated, the court reviews the decision of the Commission based upon the record

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<sup>5</sup> Missouri Rule of Civil Procedure 44.01(a)



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made at the hearing before the hearing officer (or by the Commission in the rare event the Commission heard the case or opened the case for further evidence before the Commission).

The court itself may not place value on the property but may determine if the decision of the Commission:

1. Is in violation of constitutional provisions;
2. Is in excess of the Commission's statutory authority or jurisdiction;
3. Is unsupported by competent and substantial evidence upon the whole record;
4. Is, for any reason, unauthorized by law;
5. Is made upon unlawful procedure or without a fair trial;
6. Is arbitrary, capricious, or unreasonable;
7. Involves an abuse of discretion.

If the Commission's decision is not upheld, the court will remand it to the Commission for an order in compliance with the ruling of the court. Of course, the circuit court decision may be appealed to the Appellate Court and Supreme Court of Missouri.

## 2.6 ADJUSTING TAX RATES WHEN VALUATIONS INCREASE

*Note that pursuant to Section 138.340 RSMo, the State Tax Commission cannot involve itself in the levy setting process. While the information here is intended to provide a rough overview of levy setting procedure, for more detail on the exact process, the assessor should contact the State Auditor's Office at 573-751-4213 or [moaudit@auditor.mo.gov](mailto:moaudit@auditor.mo.gov)*

Recognizing that assessed values would increase greatly in all parts of the state when the higher assessments from the first statewide reassessment were placed on the tax rolls in 1985, a new rollback law was enacted, and was used that year. It embodied the principle that reassessments are intended to bring about equity among taxpayers and to assure that property values accurately reflect market values. Reassessments are not intended to result in increased revenues, beyond normal growth.



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The new rollback law provided that, in setting tax rates for 1985, local governments would be permitted the same revenues as in 1984 plus an allowance based on the growth in assessed values that each had experienced over the previous three or five years, whichever was greater. The percentage increase each local government had experienced was called its "preceding valuation factor," and it determined the percentage growth in revenues each was permitted.

Missouri began two-year reassessment cycles in 1987. That necessitated a new rollback law because the preceding valuation factor was based on valuation growth over three or five years, and the assessment cycle was only two years.

#### **1. Present Rollback Law**

The current rollback law began in 1987, although it has undergone some changes since that time. It parallels the 1980 "Hancock Amendment," Article 10, Section 22. Under it, local officials first determine the revenues that were billed, or could have been billed, the prior year. [Assessed valuation times the total operating tax rate.] An increase is permitted over those prior year revenues, equal to the rate of inflation certified by the State Tax Commission or five percent, whichever is lower, provided assessed valuations increased by at least that percentage.

The permitted new revenue total is divided by the current year's valuation, except for new construction and improvements [which includes all increases in personal valuation and original assessed properties]. The resulting tax rate is applied to total valuation, including new construction and improvements to determine actual revenues. Thus, revenue increases are allowed both for inflation and for new construction and improvements.

Finally, any rollbacks required because of sales tax receipts are applied. Sometimes there are additional minor adjustments.

The rate may not exceed the rate in effect in 1984, or the highest levy voted since then. Any higher rate must be approved in a referendum.

Debt service levies are simply calculated based each year on the total valuation and the amount needed to meet principal and interest, plus a reasonable reserve.



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## 2. Rate-Setting Example

A local government with revenues allowed the prior year of \$500,000, and a 2% cost of living could set its rate based on revenues of \$510,000. With current valuation of \$25 million, of which \$800,000 is in the form of new construction, its rate would be calculated by dividing \$24,200,000 into the \$510,000 allowed. That would give it a tax rate of \$2.11. Applying that rate to the total valuation of \$25,000,000 would result in \$527,500 in taxes levied for the current year. Of the \$27,000 increase in revenues over the prior year, \$10,000 is the result of its cost of living allowance, and \$17,500 comes from taxing new construction and improvements.

### CALCULATION OF A TAX RATE

#### Permitted Revenues:

$$\begin{aligned} & \text{Tax Rate Ceiling X Prior Year Total Valuation*} \\ & \quad [\text{Schools Use Locally Assessed}] \\ & \quad + \\ & \quad \text{Allowance for Inflation} \\ & \quad = \\ & \quad \text{Revenues Permitted Current Year**} \end{aligned}$$

#### Calculation, Current Rate:

$$\begin{aligned} & \text{Total Current Valuation} \\ & \quad - \\ & \quad \text{New Construction \& Improvements} \\ & \quad [\text{Includes Increase in Personal Valuation}] \\ & \quad \div \text{ Into} \\ & \quad \text{Revenues Permitted} \\ & \quad \div 100 \\ & \quad - \\ & \quad \text{Sales Tax Rollback} \\ & \quad = \\ & \quad \text{Current Authorized Tax Rate} \end{aligned}$$





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[Some other adjustments are made, such as for annexing territory.  
This is a simplified description.]

\*Rate includes that which was not actually levied because of sales tax rollback or voluntary reduction.

\*\*Also, allowed are revenues from new construction & improvements. They are obtained by not using total valuation in the current rate calculation.

### 2.7 TAX INCREMENT FINANCING

Tax Increment Financing, or “TIF,” projects are growing in popularity in Missouri. They are not tax abatements. Rather, they are intended to result in a redirection of part of the property tax (and sales tax) in an area to finance public improvements in the area. They are intended to be used in a blighted area, a conservation area, or an economic development area where such improvements are needed to make it attractive for development. To establish a TIF, the local government must determine that no development would reasonably be anticipated without adoption of a redevelopment (TIF) plan.

TIFs are authorized by Sections 99.805 to 99.865 RSMo. They permit a city or county to finance costs associated with the redevelopment by issuing bonds or other obligations. The assessor determines the total assessed valuation of all taxable real property as of January 1 of that year, and certifies the value to the officials of each local taxing unit. That total base value is held constant, and taxes collected on it are distributed to taxing units as before, using the tax rates set each subsequent year.

Each year that the TIF is in effect, the assessor determines the amount of added value of real property in the TIF area, or the “increment.” This added value is subject to the same tax levies as the base value, but the payment is considered in lieu of taxes and is diverted to the payment of the TIF obligations. (Part of the sales tax collected in the area is also diverted.)

The added “TIF” value is reported as a part of the assessed value of the county and other political subdivisions, and is included on Forms 11 and 11A. It is deducted by school districts; however, when they calculate their foundation formula monies, and by local governments setting their tax rates.



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The only responsibility of the assessor in the TIF process is to assess the property and report those assessments.

Questions about TIFs should be directed to the Department of Economic Development, 573-751-0717 or [ecodev@ded.mo.gov](mailto:ecodev@ded.mo.gov).

## 2.8 PROPERTY TAX ABATEMENTS

Unlike exemptions, property tax abatements are given for a limited period of time. Article X, Section 7 of Missouri's Constitution gives authority for partial tax relief for forest croplands and, with a 25-year limit, to promote "reconstruction, redevelopment, and rehabilitation of obsolete, decadent, or blighted areas...." The economic development statutes are directed toward specific areas where such development is considered to be in the public interest.

### 1. Enterprise Zones and Enhanced Enterprise Zones

Authorized in Chapter 135 RSMo, Enterprise Zones are specified geographic areas designated by local governments and certified by the Department of Economic Development (DED). Zone designation is based on certain demographic criteria, the potential to create sustainable jobs in a targeted industry, and a demonstrated impact on local industry cluster development. Enhanced Enterprise Zones are the "replacement" for Enterprise Zones.

#### A. Enterprise Zones

Enterprise zones must have been designated after August 28, 1991, but before August 28, 2004. Enterprise zones benefit from abatements of at least 50% of all property taxes for improvements to real property used for manufacturing, assembling, fabricating, processing, mining, warehousing, or distribution for at least the first ten years. The abatements must end after 25 years. Section 135.215.3 RSMo

Improvements made to real property for activities other than those specified in the preceding paragraph **may** be abated if a minimum of 50 new jobs averaging 35 hours per week are created and maintained in the enterprise zone. These abatements could be set for any number of years, but not longer than 25 years. (However, the Missouri Supreme Court in a St. Louis case, granted authority to



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provide abatement for a second 25-year period on the same property under the premise that it was a new blight circumstance.) Section 135.215 RSMo. If improvements to real property are made by eligible businesses other than manufacturers, wholesale distributors, warehouse and mining operators (noted in 137.215.3 RSMo), the abatement may be granted from 0% to 100% and may apply only to one or any other number of affected political subdivisions.

Only taxes on subsequent improvements made to real property in an enterprise zone may be abated. An Enterprise Zone abatement extends to all new improvements made to real property after the designation date. Improvements can be grading, draining, installation of culverts, etc., or the construction of buildings. Existing improvements do not qualify for abatement.

Personal property taxes may not be abated. The exemptions allowed in Sections 135.215 RSMo, are not allowed to any "public utility;" as such term is defined in Section 386.020 RSMo. Section 135.230 RSMo.

The governing body has the flexibility to apply abatements (other than that required) to some and not other political subdivisions. Additionally, the percentage of abatement may differ depending upon the terms of the resolution. For instance, a governing body may prefer one type of business to another and offer that type a higher percentage abatement than the less preferred.

Any abatement or exemption provided for under the provisions pertaining to Enterprise Zones on an individual parcel of real property shall cease after a period of thirty days of business closure, work stoppage, major reduction in force, or a significant change in the type of business conducted at that location. For the purposes of this subsection, "work stoppage" shall not include strike or lockout or time necessary to retool a plant, and "major reduction in force" is defined as a seventy-five percent or greater reduction. Any owner or new owner may reapply, but cannot receive the abatement or exemption for any period of time beyond the original life of the enterprise zone (Section 135. 215 RSMo). All enterprise zones designated before January 1, 2006 shall be eligible to receive the tax benefits under Sections 135.950 to 135.970 RSMo.



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#### **B. Enhanced Enterprise Zone – 135.950**

Enhanced Enterprise Zones were created in 2004. They essentially substituted the words “enhanced business enterprise” for “assembling, fabricating, processing, manufacturing, mining, warehousing, or distributing properties.”

“Enhanced business enterprise” is defined as an industry or one of a cluster of industries that is either (a) identified by the Department of Economic Development as critical to the state’s economic security and growth; or (b) will have an impact on industry cluster development, as identified by the governing authority in its application for designation of an enhanced enterprise zone and approved by the department. It does NOT include gambling establishments, and food and drinking places.

This Section governing enhanced enterprise zones mandates abatements of at least 50% of all property taxes for improvements to real property used for enhanced business enterprises for at least the first ten years. After the first ten years, abatements from 0 to 100% are permitted for the next fifteen years. Section 135.963.5 RSMo, 2004

Only taxes on subsequent improvements made to real property after August 28, 2004, in an enterprise zone may be abated. Personal property taxes and taxes on real property improvements existing before the designation of the zone may not be abated.

The governing body has the flexibility to apply abatements (other than that required) to some and not other political subdivisions. Additionally, the percentage of abatement may differ depending upon the terms of the resolution. For instance, a governing body may prefer one type of business to another and offer that type a higher percentage abatement than the less preferred.

#### **C. Assessor’s Duty**

The law requires all real property to be reassessed every two years. Property within an enterprise zone is no exception and should be revalued every two years as well. This process includes review for proper sub-classification. After the property is reassessed, unabated properties (including the land, pre-existing improvements, and subsequent improvements which do not qualify for abatement or are not abated by the resolution) are subject to being taxed on the new assessed value similar to any other property.



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For improvements built subsequent to the designation of the enterprise zone, qualifying for abatement, and abated pursuant to the relevant resolution, the new assessed value should be established and recorded, then the appropriate abatement percentage applied to the updated assessment of the improvements.

Simply put, Missouri law does not authorize a “freezing” of assessed value in an enterprise zone. Rather, property values should be updated in the same manner as other properties, and when the reassessment is completed, the abatement should be applied to the updated assessment of the properties subject to abatement.

Additionally, Section 137.237 RSMo, requires that in each odd-numbered year the assessor identify, list, and state the true value in money of the property in the county which is totally or partially exempt from ad valorem taxes because of Tax Increment Financing (Sections 99.800 to 99.865 RSMo); Enterprise Zones (Sections 135.200 to 135.255 RSMo); and Urban Redevelopment Corporations (Section 353.110 RSMo). This report, commonly referred to as the “November First Report” must:

1. Identify and list the properties;
2. State the true value in money of the properties included;
3. State the number of years of abatement remaining; and
4. Provide the percentage of true value exempted for the abated properties.

The report must be filed with the state tax commission on or before November first of every odd-numbered year. Such report, in summary form, must be included in each reassessment notice stating the tax abatements in the county and a statement that a list of specific abated properties is available for inspection upon request at the county courthouse.

The statutes do not spell out who is supposed to notify the assessor or what form that notification takes. Each Enterprise Zone is required to designate a local zone coordinator. This person should work with the assessors to provide the needed information regarding the percentage of abatement and which businesses qualify.



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#### **D. Further Information**

The Missouri Department of Economic Development, Incentive Section, 301 West High Street, Box 118, Jefferson City Missouri, 65102, administers the Enterprise Zone program, possesses the expertise concerning the law pertaining to enterprise zones. This agency may also be reached at its email address, [ecodev@ded.mo.gov](mailto:ecodev@ded.mo.gov), at their website, <https://ded.mo.gov/>, or by phone, 573-751-4962.

#### **2. Urban Redevelopment Corporations**

Authorized in Chapter 353 RSMo, Urban Redevelopment Corporations were originally designed in 1943 for St. Louis and Kansas City to address urban blight. They may now be established in any city.

To establish an Urban Redevelopment Corporation, the governing authority adopts a resolution declaring an area blighted--that it has become an economic and social liability because of age, obsolescence, inadequate or outmoded design or physical deterioration, and other such conditions which are conducive to ill health, crime, or inability to generate reasonable taxes. Blight can mean lack of parking, buildings not suited for modern merchandising, a high rate of vacancies, or declining building conditions or property values.

Urban Redevelopment Corporations are private, not-for-profit entities. The city gives them certain rights and powers in return for redeveloping an area. The city may grant property tax abatements for up to 25 years. Although most abatements have been for new improvements made to real estate that is not a requirement of the statute. Abatements must total 100% not to exceed 10 years (the time period could be less) after the Corporation obtains the property. Land and improvements are then reassessed on the 11th year, and an abatement of from 50% to 100% can be granted for a period not to exceed the next 15 years.

The assessor determines the value of the land, exclusive of improvements, for the year prior to the year the Corporation obtained the property (Section 353.110.1 RSMo). That assessment is not increased until the initial period of abatement has ended.

The city and Corporation may agree to make payments in lieu of taxes.



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### **3. Land Clearance Authority Abatements**

Special power is granted to Land Clearance for Redevelopment Authorities in constitutional charter cities by Section 99.700 RSMo, to abate taxes. Persons building or rehabilitating real estate in a blighted area may apply to the Authority for abatement. When the Authority grants a certificate of abatement, the taxpayer notifies the assessor, who issues a statement as to the current assessed valuation. That assessment remains in effect for ten years, except that it may be increased or decreased for property other than the construction included in the plan approved by the Authority.

### **4. Forest Cropland**

A form of abatement is provided by Chapter 254 RSMo, for commercial tree production. Land approved by the State Forester as forest cropland is assessed \$1 per acre if approved through 1974, or \$3 an acre if approved since, and taxed on that basis for up to 25 years. The Conservation Commission sends to each county at least 50 cents per acre of privately-owned forest cropland each year (and 75 cents per acre for state-owned classified land). When the timber is harvested on forest cropland, a stumpage fee is imposed and its receipts are placed in the Commission's fund. The assessor is prohibited (Section 254.120 RSMo) from increasing assessments on other property owned by the forest cropland owner to compensate for taxes lost on the forest cropland.

## **2.9 THE LEGISLATIVE PROCESS**

Missouri's Constitution (Article III, Sections 21 to 35), statutes (Chapter 21), and House, Senate, and Joint Rules spell out in great detail legislative procedures to be followed. The basic process of enacting a bill into law is straightforward, and is depicted in the adjoining illustration.

The path followed by an introduced bill includes its first reading, which is only by title, receiving a number, printing of copies, being read a second time and referred to a committee by the presiding officer, receiving a public hearing, and being considered in executive session by the committee. The committee may reject the bill, adopt a substitute bill, combine it with other measures in a substitute, or approve the bill with amendments.

The committee chairman reports the bill (and amendments, if any) to the floor, and the bill is placed on a calendar of bills awaiting perfection (possible amendment on the floor and first-



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round approval by the full body). If the bill is a committee substitute, it is printed again. Bills are taken in turn from the formal calendar. When reached, the bill may be placed on the informal calendar for later consideration, or can be acted upon. Committee amendments are considered, and amendments may be offered on the floor. Amendments may be adopted, or a house substitute adopted. The bill is then “perfected,” or approved as changed, printed a second time (third time if a committee substitute), and placed on another formal calendar for third reading. Third reading is the final adoption by the body, and does not include further amendments. It requires a roll call vote, and approval by a constitutional majority of the body.

When a bill reaches the second house, it is read by title and referred to committee, where the process is repeated, with hearings, amendments, etc. If it is a committee substitute, it is printed again after being reported to the floor to be placed on the calendar. Any changes by the second house must be approved by a roll call vote in the first house, or the bill is returned. If the second house does not retreat on the changes, the bill must go to a conference committee of five members from each house. The report of that committee must be adopted without change by both houses before the bill can become law.

Once it is truly agreed and finally passed, the bill is signed in open session by the presiding officer of each chamber. Legislation is sent to the governor for signature, and proposed amendments to the Constitution are sent to the secretary of state for submission.

A vetoed bill is returned to the chamber where it was introduced. If a two-thirds vote there overrides the veto, the bill is sent to the second chamber, where it must again receive a two-thirds vote, or the veto is sustained. In any year in which the governor has vetoed a measure too late for the legislature to consider the veto, the legislature meets in the fall in a veto session, where all bills that were vetoed at the end of the session or after adjournment are placed on the agenda. Those are the only issues before that session unless the governor calls a special session to coincide with the veto session. Special sessions are limited to the subjects included in the call.

Each legislature meets for two regular sessions in its biennium, each lasting from early January to mid-May. Although the legislature meets each year, all bills are tabled at the end of each annual session. If the legislator wishes a tabled bill to be considered, it must be introduced again the following year.





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## 2.10 PUBLIC RECORDS--THE SUNSHINE LAW

### 1. Definition

The Sunshine Law is embodied in Chapter 610 RSMo, and is intended to open the records, meetings, and votes of governmental bodies to public examination. The assessor is often most concerned with what is and what is not a public record. Section 610.010.(6) RSMo, in pertinent part, defines a public record as:

"Public record," any record, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared for the public governmental body by a consultant or other professional service paid for in whole or in part by public funds . . . .

A few exceptions are listed in Section 610.021 RSMo. These include documents related to litigation, legal actions, attorney-client communications, personnel records, the leasing or sale of real estate, etc. However, virtually every other document and electronically stored information retained in the assessor's office is public record. *Attorney General Opinion 117-91* (May 16, 1991) concluded that the property record cards are public records.

### 2. Access

Section 610.023 RSMo, states that each public governmental body shall make its public records available for inspection and copying by the public upon request. The request must be acted upon "as soon as possible" but in no event later than the end of the third business day following the date of the request. If it is impossible to comply with these time constraints, the custodian of the records must give a detailed explanation for the delay and specify the earliest time and date the records will be available.

### 3. Copying

Section 610.010.(2) RSMo, states the if a member of the public requests a copy of a public record, and duplication equipment is available, photocopies will be provided at actual cost. Below is a summary of costs that may be received for copying public records pursuant to Section 610.026



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1. Fees for copying documents smaller than nine by fourteen inches are limited to a 10 cent per page charge and the hourly fee for duplicating the document. The hourly fee may not exceed the average hourly rate of pay for clerical staff of the office.
2. Fees for documents larger than nine by fourteen and for tapes, disks, videos, maps, pictures, slides, etc. shall be based on the cost of the copies and staff time—not to exceed the hourly rate of pay for staff of the public governmental body.
3. Research time for fulfilling record requests may be charged at the actual cost of such time, but the office must use employees that will result in the lowest amount of charges.
4. Before copies are produced, the requestor may request an estimate of the costs of duplication.
5. Documents may be furnished without charge or at a reduced rate if it is in the public interest because it contributes significantly to public understanding of the governmental body and is not primarily in the commercial interest of the requestor.

It is important to note that the per page copy cost for documents less than nine by fourteen inches is not “capped” at ten cents. Instead, the charge is ten cents per page plus the hourly fee for staff time to duplicate the document. The payment of copying fees may be requested prior to making of copies. Section 610.026.2 RSMo.

#### **4. Penalties**

If a court finds that a person “knowingly” violates this law, the violator is subject to a fine of up to \$1,000, and the judge may order the violator to pay all costs and attorneys fees. If a court finds a person “purposely” violates this law, the violator may be subject to a fine of up to \$5,000, and the judge shall order the violator to pay all costs and attorneys fees. Section 610.100.6 RSMo.

#### **5. Sources**

The Office of the Attorney General (P.O. Box 899, Jefferson City, MO 65102, Telephone 573-751-3321) makes available a pamphlet entitled *The Missouri Sunshine Law* which provides excellent, detailed information regarding public records and meetings. The pamphlet and other useful, up-to-date information are also available at: <https://ago.mo.gov/missouri-law/sunshine-law>.



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#### **6. Exceptions – Records of Mining Companies**

Section 137.115.17 RSMo, (2016) states that “Any information provided to a county assessor, state tax commission, stage agency, or political subdivision responsible for the administration of tax policies shall, in the performance of its duties, make available all books, records, and information requested, except such books, records, and information as are by law declared confidential in nature, including individually identifiable information regarding a specific taxpayer or taxpayer’s mine property. For purposes of this subsection, “mine property” shall mean all real property that is in use or readily available as a reserve for strip, surface, or coal mining for minerals for purposes of excavation for current or future use or sale to others that has been bonded and permitted under Chapter 444 RSMo.

#### **2.11 RULES OF THE STATE TAX COMMISSION**

The State Tax Commission’s rules are designed to explain and supplement the statutes. The rules are printed at *12 CSR 30* and in the *Annual Report of the Proceedings of the State Tax Commission* (hereinafter, Annual Report). They may also be found at the Commission’s website: <https://stc.mo.gov/annual-reports/>. "CSR" is the abbreviation for Code of State Regulations which may be found at many libraries. The Annual Report is published on the State Tax Commission’s website annually, and available at <https://stc.mo.gov/annual-reports/>. In addition to the rules, this report contains information such as valuation of utilities, assessed values by counties, decisions of the State Tax Commission, etc. State Tax Commission rules do not change often, but prior to relying upon the published rules, the assessor should check to see if any changes have been made since the publication of the book. Feel free to call the legal Section of the State Tax Commission (573-751-1715) for information on amendments to the rules. Current rules are also available on the Secretary of State’s website at <https://www.sos.mo.gov/adrules/csr/csr>.



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## 2.12 CALENDAR OF STATUTORY DATES

### January 1

**All Counties**--Assessment year begins; Assessment valuation date. Tax liability date. Sections 137.075, 137.080, and 135.115(1) RSMo.

**All Counties**--In even-numbered years, assessor to submit two-year assessment maintenance plan to county governing body and STC. Section 137.115(1) RSMo.

**All Counties**--Agricultural land separated or split-off, may be reassessed if it no longer retains agricultural use. Section 137.021(3) RSMo.

**Certain Second Class Counties**-- building permit list to assessor. Section 137.177(4) RSMo.

**St. Louis City**--Assessment process begins. Section 137.490 RSMo.

**STC**--STC to make ranges in value based upon land's productive capabilities for classification of agricultural and horticultural property (defined Section 137.016 RSMo) available to assessors on or before December 31st of odd-numbered years. Section 137.021 RSMo.

**STC--Original Assessment** – Property lien date for utility and railroad companies. Sections 151.020.1, 151.110.1, and 153.030.2, RSMo.

### February 1

**All Counties**--County governing body to approve and forward assessor's two-year assessment maintenance plan or its alternative to STC. Section 137.115(1) RSMo.

**STC**--Consumer Price Index (CPI), available on February 1 (December CPI), certified to county clerk. Section 137.073.4 RSMo.



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#### March 1

**All Counties Except St. Louis City**--Taxpayers' (except specified exceptions) personal property lists due to assessors. Sections 137.280 and 137.345 RSMo.

**STC**— On or before December 31 of the odd-numbered year, the STC publishes productivity values to take effect (if not disapproved by the General Assembly) in the next odd-numbered year. Section 137.021 RSMo.

**STC – Original Assessment** – Aggregate Statement of Taxable Property is sent by the Original Assessment Section to railroad, utility, commercial aircraft, and private car companies. Sections 151.020.4, 153.030.2, 155.020, and 155.040.3, RSMo.

#### April 1

**Department of Revenue**--Assessors receive list of motor vehicles from Department of Revenue. Section 137.116 RSMo.

**St. Louis City**--Taxpayers' personal property lists to assessor. Section 137.495 RSMo.

**STC**--Provides county clerks a list of automatically filed appeals under the two year assessment cycle. 12 CSR 30-3.005.

**STC – Original Assessment** – Each railroad and utility company must submit their locally assessed property schedules to the county assessors where locally assessed property is located. Sections 137.280, 151.110.1, and 153.030.2, RSMo.

**STC** – Forms 11 and 11A made available to county clerks.

#### April 15

**STC--Original Assessment** – Each railroad and utility company must submit their Aggregate Statement of Taxable Property (except for the market value of locally assessed property) to the



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Original Assessment Section, including a copy of their miles of line in each taxing jurisdiction as reported to the county clerks. Sections 151.020.1(1) and 153.030.2, RSMo.

**STC – Original Assessment** – Each railroad and utility company must submit their miles of line in each taxing jurisdiction to the county clerks where miles of line are located. Sections 151.030 and 153.030.2 RSMo.

#### April 20

**STC--Original Assessment** – Each county assessor must certify to the Original Assessment Section, the county clerk, and the company, the market value and assessed value of all property declared on the Locally Assessed Property Schedules for each railroad and utility company. Sections 151.110.2 and 153.030.2, RSMo, and 12 CSR 30-2.011.

#### May 1

**All Counties**—Assessor must notify the STC of aircraft not owned by an airline company for which the owner has requested the STC to assess pursuant Section 155.040.3 RSMo.

**STC – Original Assessment** – Each railroad and utility company must submit their Aggregate Statement of Taxable Property schedules for the market value of locally assessed property to the Original Assessment Section. Sections 151.110.3 and 153.030.2, RSMo.

**STC – Original Assessment** – Each commercial aircraft entity engaged in air commerce must submit their Aggregate Statement of Taxable Property to the Original Assessment Section. Section 153.030.2, RSMo.

**STC – Original Assessment** – Each commercial aircraft entity not engaged in air commerce must submit their Aggregate Statement of Taxable Property to the Original Assessment Section, with the county assessors providing the Original Assessment a compilation of these entities making a claim of “Commercial Aircraft” on the person property list. Section 155.040.3, RSMo, and 12 CSR 30-2.015.



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**STC – Original Assessment** – Each private car company must submit their Aggregate Statement of Taxable Property to the Original Assessment Section, including information for the private car tax credit, if making a claim and have incurred eligible expenses for manufacturing, maintaining, or improving their qualified rolling stock. Sections 137.1009.4 and 137.1018.4, RSMo, and 12 CSR 30-2.018.

#### **2nd Monday in May**

**St. Louis City**--Board of Equalization to be appointed by Mayor. Section 138.140(1) RSMo.

#### **May 15**

**STC – Original Assessment** – Each county clerk must ensure accuracy and certify to the Original Assessment Section miles of line in each taxing jurisdiction, as reported by each railroad and utility company. Sections 151.040 and 153.030.2, RSMo.

#### **June 1**

**All Counties Except First Class Charter**--Assessors shall make and certify to the county commission abstracts of property lists. Section 53.175 RSMo.

**Township Organization Counties**--Assessor's book to county clerk. Sections 137.425(2) and 137.445 RSMo.

**Township Organization Counties**--Assessment lists to county clerk. Section 137.450 RSMo.

**STC – Original Assessment** – Tentative assessments and notice of informal hearings are sent by the Original Assessment Section to railroad and utility companies and commercial aircraft entities. 12 CSR 30-2.021(1)(A).



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#### June 15

**All Counties** – Last day for Assessor to mail impact statements. In odd-numbered year must include projected tax liability statements. Section 137.355(2) RSMo.

**STC – Original Assessment** – Commission conducts informal hearings for railroad and utility companies and commercial aircraft entities. 12 CSR 2-021(1)(A).

**STC – Original Assessment** – Commission certifies final assessments to commercial aircraft entities and county clerks. Section 155.040.4, RSMo.

#### July 1

**All Counties** – Assessor's book to be submitted to the county clerk. Section 137.245(1) RSMo.

**St. Louis City** – Assessor's books due. Section 137.510 RSMo.

**First Class Counties** – Assessors to make and complete a list of all real and tangible personal property and assess the property at its true value in money. The Assessor's book to be returned to county government body by July 1<sup>st</sup>. Sections 137.335 and 137.375(1) RSMo.

**Certain Second Class Counties**--Building permit list to assessor on January 1 and July 1. Section 137.177(4) RSMo.

**STC--Original Assessment** – Commission certifies final assessments to railroad and utility companies and county clerks. Sections 151.090 and 153.030.2, RSMo, and 12 CSR 30-2.021(1)(B).

#### 1<sup>st</sup> Monday in July

**First Class Counties** –In year of general assessment (odd-numbered year), boards of equalization may begin July 1. Section 138.090 RSMo. Omitted property may be added and hearings held after





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notice to taxpayer. Section 138.070 RSMo.

#### **2nd Monday in July**

**All Counties** – Appeals due to the boards of equalization. Sections 137.275, 137.385, and 138.180, RSMo.

**St. Louis City** – Omitted property may be added and hearings held after notice to taxpayer. Section 138.150 RSMo.

#### **3rd Monday in July**

**All Counties**--Boards of equalization convene. In year of general reassessment (odd-numbered year), boards may begin after July 1. Section 138.010(3) RSMo.

**Second, Third, and Fourth Class Counties**--Hearing for owners of omitted property added to assessor's book not less than 5 days after notice. Sections 138.070 and 138.150 RSMo.

**STC**--Final day to equalize real and personal property values among all counties in the state under Section 138.390 RSMo.

#### **July 20**

**All Counties** – The Clerk (Assessor in St. Louis City) to forward copy of aggregate valuation to governing body of each political subdivision. Section 137.245(3) RSMo.

**All Counties** – County Clerk to send Aggregate Abstract (Form 11) to STC. Section 137.245(2) RSMo.

**St. Louis City** – Aggregate Abstract of Valuations (Form 11) due to Mayor and STC. Section 137.515 RSMo.



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#### **July 31**

**First Class Counties** – BOE Adjourns Section 138.100

#### **Once a Month To End of Year**

**First Class Counties**--Boards of equalization to hear allegations of erroneous double assessments and clerical errors. Section 138.100 RSMo.

#### **August 15**

**STC – Original Assessment** – Tentative assessments and private car tax rate and notice of informal hearings are sent by the Original Assessment Section to private care companies. Section 137.1015.1, RSMo, and 12 CSR 30-2.021(1)(A).

#### **4th Monday in August**

**Most Counties**--Lands and lots with delinquent taxes are subject to sale. Section 140.150 RSMo.

#### **Last Saturday in August**

**Charter Counties** – Boards of equalization adjourn. Section 138.100 RSMo. (Held to be directly, not mandatory. 529 S.W.2d. 384.)

#### **August 31**

**STC – Original Assessment** – Commission conducts informal hearings for private car companies. Section 137.1015.1, RSMo, and 12 CSR 30-2.021(1)(A).

**STC – Original Assessment** – Commission certifies final assessments and private car tax rate to



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private car companies. Section 137.1015.1, RSMo, and 12 CSR 30-2.021(1)(B).

#### **September 1**

**All Counties**--Each political subdivision, except counties, fix rate and send to county clerk for entry in tax book. Section 67.110 RSMo.

**All Counties Where Assessors Are Elected**--Newly elected assessors take office. Section 53.010 RSMo.

#### **September 3--"120 Days Before January 1"**

**STC**--STC to furnish assessment blanks to assessor at expense of counties. Section 137.110 RSMo.

#### **September 15**

**First Class Counties**--County clerk to deliver book to collector if county clerk does not extend figures. Section 137.392 RSMo.

#### **September 20**

**First Class Counties**--County commission to determine amount of revenues needed to be raised for county purposes and set tax rates accordingly. Section 137.390 RSMo.

**Second, Third, and Fourth Class Counties**--Governing body shall ascertain amount of revenues needed to be raised, schedule public hearing on tax rate, and set tax rate. Section 137.055 RSMo.

#### **September 30**

**All Counties**--Complaints for Review of Assessment due at STC on September 30 or 30 days after the final action of the board of equalization, whichever is later. Sections 138.110 and 138.430.1 RSMo, and 12 CSR 30-3.010.



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**St. Louis City**--Assessor to prepare and give tax bills to comptroller. Section 137.520 RSMo.

#### October 1

**Third and Fourth Class Counties and Certain Second Class Counties**--Assessor to provide collector a list of all real property transfers occurring between January 1st and September 1st that year. Section 53.073 RSMo.

**STC – Original Assessment** – Commission certifies final assessments and private car tax rate to Director, Missouri Department of Revenue. Section 137.1018.2, RSMo, and 12 CSR 30-2.018(1).

#### October 31

**First Class Counties**--Clerk to extend taxes on book and deliver to collector. Section 137.392 RSMo.

**Second, Third, and Fourth Class Counties**--County clerk delivers extended book to collector. Sections 137.290 RSMo.

**St. Louis City**--Comptroller to deliver tax bills to collector and get receipt. Section 137.520 RSMo.

#### Between Board Adjournment and November 1

**All Counties**--County Abstract (Form 11A) due at STC. Section 138.400(3) RSMo.

**STC**--From the time the board of equalization adjourns sine die through November 1, STC may call board of equalization into session when final valuation fixed by board of equalization differs materially from final valuation fixed by STC. Section 138.400(4) RSMo.

#### November 1

**All Counties**--In odd-numbered years, assessors to submit lists of tax exempt properties to STC Section 137.237 RSMo.



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**STC--First Class Counties**--STC to furnish assessment blanks to assessor "60 days before January first," if software is provided for implementation. Section 137.335 RSMo.

#### **December 1**

Tax bills must be mailed. Section 52.230 RSMo.

#### **December 31**

**STC**--In even-numbered years, STC to promulgate values for agricultural grades. Section 137.021 RSMo.

#### **Daily**

**St. Louis City**--Assessor to make record of transfers of land recorded in recorder's office and change records accordingly. Section 137.535 RSMo.

#### **Any Term of County Commission Before Taxes Paid**

**Second, Third, and Fourth Class Counties**--County Commission may correct erroneous assessments, mistakes, defects in descriptions of land, or double payments of taxes. Section 137.270 RSMo.

#### **15th of Each Month**

**Third and Fourth Class Counties**--Recorder to furnish list of real estate transfers in county to assessor. Section 137.117 RSMo.

#### **Annually**

**All Counties**--County clerk shall send the STC a copy of the statement of assessment and taxes charged (forms 1309, 1310, and 1313). Section 137.295 RSMo.

**Township Counties**--County clerk to make for each township collector a correct, alphabetical list of



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persons owing taxes on personal property, the property assessed, the aggregate value of property assessed to each person, and the taxes due. Section 137.465 RSMo.

**STC**--STC shall make official visit to each county. Section 138.415 RSMo.

**STC**--STC empowered to call group meeting of assessors. Section 138.450 RSMo.

**STC**--STC to certify to Director of Revenue and Commissioner of Education a copy of most recent annual report containing total valuation of all taxable properties (distributed approximately April). Section 138.445 RSMo.