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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 Cassilly case 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 authorizes the state to reimburse one half of most 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 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, 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, 141.240. 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 they are not, 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 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, 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, 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) 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.

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



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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	33.3%

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 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.



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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 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).



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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 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.

(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 or permitted, shall be assessed based upon how the 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.

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. 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 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 apply:

Assessed Valuation
0-\$1000

Penalty
\$10



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\$1001-\$2000	\$20
\$2001-\$3000	\$30
\$3001-\$4000	\$40
\$4001-\$5000	\$50
\$5001-\$6000	\$60
\$6001-\$7000	\$70
\$7001-\$8000	\$80
\$8001-\$9000	\$90
\$9001 and above	\$100

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

B. City of St. Louis

By April 1, the taxpayers must file with the assessor a list of tangible personal property owned or



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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, 137.505.

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. 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.

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. See 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 of these taxpayers shall be taxed in the *county where the taxpayers reside*. However, the following property owned by these taxpayers is taxed *where the property is located*:

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



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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.

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: <http://www.stc.mo.gov/decisions.htm>.

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 federal Soldiers and Sailors Relief Act of 1940.



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(Now entitled 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 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. If the vehicle is registered jointly with a spouse, the vehicle may not be taxed in Missouri. As of 2009, if a military spouse is the sole owner, the vehicle should still be treated as if it is owned by the military personnel. Verification of a serviceperson’s state of legal residence or SLF [home of record] is easily ascertainable by looking at the bottom portion of their “Leave and Earnings Statement” (i.e., pay stub), which indicates the individuals claimed home state of [record] legal residence.

In November 2009, the President signed 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. Prior to this change, the State Tax Commission advised assessors that vehicles should not be



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assessed in Missouri if they were owned individually by the service member whose home of record was not Missouri or jointly by the service member and spouse. Accordingly, we also advised that if the spouse was the sole owner of the vehicle under these circumstances, the vehicle should be assessed.

The change in the federal law now requires a vehicle (or, other personal property) not to be taxed in Missouri if it is owned by the spouse of a service member whose home of legal residence [record] is not Missouri, and whose residence is the same as the service member's, even if the property is owned individually by the spouse. Conversely, personal property is taxable in Missouri if it is owned by the spouse of that service member stationed outside the state of Missouri but whose home of legal residence [record] is Missouri, even if the property is located outside Missouri, provided the residence of the spouse is the same as the service member's.

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	137.075, RSMo 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) Who Is Missouri Resident	In or Outside Missouri	In Missouri County Where They Entered The Service	Federal Law 50 USC 571 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. 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. "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 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



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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. 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. See Sections 140.730 through 140.750.

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. 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%.



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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 of Missouri ex rel. Ronald Leggett v. Sovran Leasing Corp.* The court based its decision upon §154.010 which was enacted in its current form in 1879. Subsection 154.010.1 makes steamboats and other boats and vessels a special class of property. Subsection 154.010.2 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.

(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, is as follows:



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- 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

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) 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



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

B. Determining Recovery Periods Under §137.122, RSMo

To assess business personal property (BPP) pursuant to §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, pages 98 through 107. An Adobe-Acrobat Reader is required to view, download, or print the publication. To access Publication 946, go to www.irs.gov/pub/irs-pdf/p946.pdf,



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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 §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 §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%

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 37.2)

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%



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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)
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%.



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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)
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 **Ship and Boat Building Machinery and Equipment** (Asset Class 7.31)
6. Assets used in **Printing, Publishing, and Allied Industries** (Asset Class 27.0)
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. **Telegraph, Ocean Cable, and Satellite Communications (TOCSC) – High Frequency Radio and Microwave Systems** (Asset Class 48.32)
12. **Computerized Switching, Channeling, and Associated Control Equipment (TOCSC)** (Asset Class 48.35)
13. **Telegraph, Ocean Cable, and Satellite Communications (TOCSC)** (Asset Class 48.36)
14. **Equipment Installed on Customer’s Premises (TOCSC)** (Asset Class 48.38)
15. **TOCSC – Support and Service Equipment – 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)
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)



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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:
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)



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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 – 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%

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** (Asset Classes 49.11, 49.13, 49.14 49.21, 49.221, 49.3, 49.4 & 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 (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 – Special Tools (Asset Class 34.01)—3 years

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



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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 – Special Tools (Asset Class 34.01)—3 years

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

Motor Vehicles – Special Tools such as jigs, dies, molds, etc., used in the manufacture of motor vehicles (Asset Class 37.2)

Motor Vehicles, assets used in the manufacture of (Asset Class 37.11)

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

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



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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 (Asset Classes 49.11, 49.13, 49.14 49.21, 49.221, 49.3, 49.4 & 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

Sawing of Dimensional Stock from Logs, assets used in permanent or well-established



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

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

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



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TOCSC--Computerized Switching, Channeling, and Associated Control Equipment

(Asset Class 48.35) —7 years

TOCSC--Equipment Installed on Customer's Premises (Asset Class 48.38) —7 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 (Asset Classes 49.11, 49.13, 49.14, 49.21, 49.22, 49.3, 49.4 & 51) —20 years

Vegetable Oils and Vegetable Oil Products, assets used in the manufacture of (Asset Class 20.3)

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 the Board of Equalization and, thereafter, to the State Tax Commission or the Circuit Court (See



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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: <http://www.stc.mo.gov/decisions.htm> by using the key word “exemption.”

The basic statute controlling property tax exemptions is section 137.100, which tracks Article X, Section 6 of the Constitution of Missouri. Section 137.100 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
- (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



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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.

(10) Solar energy systems not held for resale.

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 relevant tax day, it is exempt from taxation. The exception to this rule is a taxable leasehold interest in



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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

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 trustee.” Id. at 107.



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In the administrative appeal of City of Festus, Missouri v. Dougherty, STC Appeal Number 89-34063 (1990), 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 § 172.273.3 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 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) and the County Agricultural Societies (Section 262.290) 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). That is, the association was not an adjunct of the Missouri Department of Agriculture.

4. SOLAR ENERGY SYSTEMS NOT HELD FOR RESALE

The term “solar energy systems” is not defined by Missouri statutes. An undefined term is given its plain and ordinary meaning. A review of other states’ definitions as well as common dictionaries provide that a solar energy system is as a device or structured design feature, a substantial purpose of which is to provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generating or water heating.

5. 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 provides as follows:

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



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(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;....

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



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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.

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 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. Scientology, supra, at 842.

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.

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) (storage buildings not exempt); St. Margaret Mary Alacoque Catholic Church v.



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Morton, STC Appeal Number 87-11754 (1989) (3 acres of land with janitor's residence and storage units not exempt).

Two cases have dealt with buildings used for religious worship. In Kallstrom v. Wilson, STC Appeal Number 88-60000 (1989), 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. In Sims v. O'Flaherty, STC Appeal Number 1983-5070 (1985), the Commission found that a building used only for religious worship was exempt from taxation even though it was owned by a private individual and not an exempt organization.

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) 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



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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.

Section 137.100.5, 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



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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.

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), 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). 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



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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.

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



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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” 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



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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:

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), 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) (nature conservancy land used for educational, charitable purposes); L-A-D Foundation v. Koch, STC Appeal Number 1981-7800 (1982) (land used to promote forestry, agriculture and horticulture); International University



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Foundation v. O’Flaherty, STC Appeal Number 1983-5104 (1985) (house used as administrative offices and headquarters of International University); Laura Ingalls Wilder Home Association v. Day, STC Appeal Number 85-92400 (1988) (Laura Ingalls Wilder home and museum).

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



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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).

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



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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.

(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



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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. 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



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basis.

(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 of the recent 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, especially in recent years. 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



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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 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).

6. 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



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engaged in the private practice of medicine.”

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 is taxable in spite of the exempt status of the respective hospitals. (DePaul Health Center v. Zimmerman, STC Appeal Number 85-32638 (1988) (vacant land owned by hospital not exempt); Carondelet Health Corporation v. Kelley, STC Appeal Number 88-30185 (1989) (vacant land owned by hospital not exempt); SSM Health Care v. Morton, STC Appeal Number 88-11778 (January 18, 1991) (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), 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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7. MISCELLANEOUS EXEMPTIONS

A. FRATERNAL AND VETERANS' ORGANIZATIONS (SECTION 137.101)

Section 137.101, 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 was amended to remove veterans' organizations from the list of organizations and a new subsection was added to section 137.100, and exempts property belonging to such organizations with the following language:



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



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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 was amended and subsection 148.020.5 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 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 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.



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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), 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), 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, 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.



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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), 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), 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 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.



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

In the November 2, 2010 election, the voters passed House Joint Resolution 15. The measure amended Article X, Section 6 of the Missouri Constitution to read, in pertinent part:

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 (New language bolded)

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. In fact, pursuant to Article XII, Section 2(b) of the Missouri Constitution, the measure will take effect thirty days after the election approving it, so the effective date was December 2, 2010.

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 (7th 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.

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:



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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 others' arguments and come to an agreement if possible.
- B. **Board of Equalization**--The parties present their case to the local board which 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 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



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assessment, drops the complaint.

If changes are to be made before the assessor turns over the books to the clerk, the assessor can change the assessment. 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 board of equalization (hereafter referred to as the board) in person, by attorney or agent, or in writing pursuant to section 137.275. 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 anyone else who wishes to appear on his or her behalf. Or, 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 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



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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 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.

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.



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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 supply the information listed above.

B. Non-Charter First Class Counties

Any person aggrieved by the assessment of his 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 before the third Monday in June 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 first 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.

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 May.



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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 first 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 4th 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, the St. 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



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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 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, 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



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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.

A taxpayer can always appeal in an even-numbered year if he or she has not appealed the previous year or the previous year's appeal was dismissed prior to April 1 of the even-numbered year.

The taxpayer should not appeal in an even-numbered year when the previous year's appeal is still pending as of April 1 of the even-numbered year. The Commission will advise the local board of equalization that the appeal for the odd-numbered year will also decide the value for the even-numbered 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.

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 his counsel, organize and present the evidence as clearly and thoroughly as possible.



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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

State Tax Commission Rules 12 CSR 30-3.001 et seq. should be consulted regarding appeal procedure. 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.

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 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).



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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, 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.]

The first statute that required tax rates to be adjusted downward when valuations increased--the first "rollback law"--was enacted in 1955. It became known as the "10 percent law" because it provided that, when real or personal valuations increased by 10 percent or more above the prior year, the local governing body was required to adjust its tax rate to yield only the amount of revenue its budget indicated was needed. This law resulted in a few rollbacks, but was largely ineffective. It was repealed after newer laws were enacted.

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



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growth.

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]. 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.

The only responsibility of the assessor in the TIF process is to assess the property and report those



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assessments.

Questions about TIFs should be directed to the Department of Economic Development, 573-751-0717 or 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, 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,^[1] granted authority to provide abatement for a second 25-year period on the same property under the premise that it was



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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), 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 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.

Effective August 28, 2004, 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) Further, after January 1, 2007, all enterprise zones designated before January 1, 2006 shall be eligible to received the tax benefits under sections 135.950 to 135.970



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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.

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



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its email address, dedfin@ded.state.mo.us, at their website, www.missouridevelopment.org, or by phone, 573-751-0717.

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. All real property owned by the Redevelopment Corporation could be exempted. 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 (Sec. 353.110.1). 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.

3. Land Clearance Authority Abatements

Special power is granted to Land Clearance for Redevelopment Authorities in constitutional charter cities by Section 99.700 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,



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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 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) 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-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.



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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.

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), in pertinent part, defines a public



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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) 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:

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.



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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

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

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: <http://www.ago.mo.gov/sunshinelaw/>.

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” 185 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.



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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: <http://www.stc.mo.gov>. "CSR" is the abbreviation for Code of State Regulations which may be found at many libraries. The **Annual Report** is a paperback book mailed yearly to each assessor and clerk in the state. 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.

2.12 CALENDAR OF STATUTORY DATES

January 1

All Counties--Assessment year begins; Assessment valuation date. Tax liability date. Sections 137.075, 137.080, 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



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before December 31st of odd-numbered years. Section 137.021, RSMo.

STC--Original Assessment--Public utility/railroad tax forms mailed from STC. Section 151.020

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.

March 1

All Counties Except St. Louis City--Taxpayers' (except specified exceptions) personal property lists due to assessors. Sections 137.280 & 137.345 RSMo.

STC—On or before December 31 of the odd-numbered year, the STC publishes values to take effect (if not disapproved by the General Assembly) in the next odd-numbered year. 137.021 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.

St. Louis City--Assessment process ends. Section 137.490, RSMo.

STC--Provides county clerks a list of automatically filed appeals under the two year assessment cycle. 12 CSR 30-3.005.

April 15

STC--Original Assessment--All railroad, public utility, pipeline, long distance carrier and private car company local assessment forms for real property are required to be submitted to the county assessor by each company. Section 151.030. The Aggregate Statement of Property is required to be submitted to the STC (Schedules 1-10 & 13).



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STC--Original Assessment--County Apportionment is required to be submitted by county clerk.(Schedule 13)

April 20

STC--Original Assessment--Assessor must certify true market value and assessment of all locally assessed property from the report received on March 1 and/or April 1, to the county clerk, company and the STC (Schedule 14).

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.

Original Assessment--Copy of Schedules 11, 12, 14, 15, 16 & 17, when applicable, must be submitted to the STC by each company. Statutes on original assessment: Section 155.020, RSMo; Section 153.050, RSMo; Section 151.040, RSMo; Section 151.020, RSMo. STC Rule: 12 CSR 30-2.020.

1st Week in May

STC--Form 11 sent to county clerks.

1st Monday in May

St. Louis City--Assessor's books due. Section 137.510, RSMo.

2nd Monday in May

St. Louis City--Appeals to the Board of Equalization due at the Assessor's office. Section 138.180, RSMo.

St. Louis City--Board of Equalization to be appointed by Mayor. Section 138.140(1), RSMo.

May 15



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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 governing body by May 15, but may be extended to May 31. Sections 137.335, 137.375(1), RSMo.

Original Assessment--County clerks must certify to the STC that the county apportionment (Schedule 13) received on April 15 is either correct, or else certify the correct number of miles in each taxing jurisdiction.

3rd Monday in May

St. Louis City--Board of equalization reviews Assessor's book and hears complaints for four (4) weeks. Section 138.170(1), RSMo. Omitted property may be added and hearings held after notice to taxpayer. 138.150 RSMo.

Mid-May to June 1

STC--Original Assessment--notice to Public Utilities/Railroads of tentative assessments 12 CSR 30-2.021 (1) (A).

May 31

All Counties Except St. Louis City--Assessor's book to be returned to county commission. Section 137.245(1) RSMo. (Also, see May 15 entry regarding first class counties).

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), 137.445, RSMo.

Township Organization Counties--Assessment lists to county clerk. Section 137.450, RSMo.



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STC--Consumer Price Index (CPI), available on June 1 (April CPI), certified to county clerk. Section 137.073.4, RSMo.

Late May to Early June

STC--Original Assessment--informal hearings on Public Utility/Railroad assessments 12 CSR 30-2.021 (1) (A)

1st Monday in June

First Class Counties--Boards of equalization, excluding St. Louis City, convene. In year of general reassessment (odd-numbered year), may begin after May 31st. Section 138.090, RSMo. Omitted property may be added and hearings held after notice to taxpayer. Section 138.070 RSMo.

2nd Week in June

STC--Form 11A sent to county clerks (so that it may be in possession of boards of equalization by 2nd Monday in July). Section 138.400, RSMo.

Before 3rd Monday in June

First Class Counties--Appeals due to Board of Equalization before 3rd Monday in June. Section 137.385, RSMo.

June 10

First Class Counties--Aggregate Abstract of Valuation (Form 11) due at STC. Section 137.375(3), RSMo.

Mid-June

Original Assessment--Notice to Public Utilities/Railroads of final assessments Section 151.090.

June 20



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Second, Third, and Fourth Class Counties--County clerk to send Aggregate Abstract of Valuation (Form 11) to STC. Section 137.245(2), RSMo.

St. Louis City--Aggregate Abstract of Valuation (Form 11) due to Mayor & STC. Section 137.515, RSMo.

STC Valuation of real and tangible personal property among counties to be equalized by STC between June 20 and second Monday in July. Section 138.390 RSMo.

Before 3rd Monday in June

First Class Counties--Written appeal to board of equalization to county clerk. Section 137.385, RSMo.

July 1

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.

Certain Second Class Counties--Building permit list to assessor. Section 137.177(4), RSMo.

STC--Original Assessment--Certification of Railroad and Utility assessments to counties Section 151.040.

2nd Monday in July

Second, Third, and Fourth Class Counties--Boards of equalization convene. In year of general reassessment (odd-numbered year), boards may begin after May 31st. Section 138.010(2), 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--Report of Valuation changes (Form STC-005) by STC due to county clerks. Section 138.400(2), RSMo.



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STC--Final day to equalize real and personal property values among all counties in the state under Section 138.390 RSMo. See June 20 entry.

Last Saturday in July

First Class Counties--Boards of equalization adjourn. Section 138.120(3), RSMo. (Held to be directory, not mandatory. 529 S.W.2d 384).

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(2), RSMo.

2nd Monday in August

Second, Third and Fourth Class Counties--Meeting of county board of equalization (known as "Board of Appeals") to hear persons whose values were raised on boards own initiative. Section 138.050(1), RSMo.

August 15

First Class Counties and St. Louis City--Complaints for Review of Assessment due at STC on August 15 or 30 days after final action of board of equalization, whichever is later. Sections 138.110 and 138.430.1, RSMo. 12 CSR 30-3.010.

4th Monday in August

Most Counties--Lands and lots with delinquent taxes are subject to sale. Section 140.150 RSMo.

September 1

All Counties--Each political subdivision, except counties, fix rate and send to county clerk for entry



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in tax book. Section 67.110 RSMo.

All Counties Where Assessors Are Elected--Newly elected assessors take office. Section 53.011 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. (Also, see October 15 entry).

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

Second, Third and Fourth Class Counties--Complaints for Review of Assessment due at STC. Section 138.460(2), RSMo; or 30 days after the final action of the board of equalization, whichever is later. Section 138.430.

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



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year. Section 53.073 RSMo.

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.

STC--First Class Counties--STC to furnish assessment blanks to assessor "60 days before January first". 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.



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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 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 June 1). Section 138.445, RSMo.