

Kansas Administrative Regulations

Kansas Department of Revenue

Article 19.—Kansas Retailers' Sales Tax

92-19-61a. Retailers' responsibility to collect sales tax; presumption of taxability.

(a) Each retailer shall collect the tax imposed by the act from the retailer's customers. Each retailer who fails or refuses to collect tax that is lawfully due shall be liable for payment of the uncollected tax.

(b) A retailer shall not advertise, hold out, or otherwise state to the public or to any customer either of the following:

(1) The tax will be assumed, absorbed, or paid by the retailer for the customer.

(2) The tax will not be charged, or if the tax is charged and collected, the tax will be refunded.

These two requirements shall not prevent a retailer from billing tax as part of a tax-included charge, if proper notice is given to the customer or public as specified in subsection (d).

(c) Each retail sale shall be presumed to be taxable. If the director establishes that a transaction was a retail sale to a final user or consumer, the retailer shall have the burden to show that the tax was collected from the customer and remitted to the state or that an exemption certificate was secured from the customer that covers the transaction.

(d)(1) Whenever practical, each retailer shall add the tax as a separate line item to the selling price when billing the customers. The initial invoice, bill, charge ticket, sales slip, or other billing memorandum shall separately state the amount of the tax being charged or contain a written statement that tax is included in the price. If the initial billing memorandum fails to reflect tax as a separate line item or to state that tax is included in the price, it shall be presumed that tax was not charged to the customer or collected.

(2) Each retailer who makes large numbers of cash sales and desires to fix a sum for the selling price and applicable tax, including sporting event concessionaires, may charge customers a tax-included amount. The tax collected as part of a tax-included

price shall be factored from the total receipts to arrive at the amount of gross receipts to report to the department.

(3) Each retailer who makes tax-included sales in which tax is an unspecified part of the customer charge shall conspicuously post a sign or notice that the customer charges are "sales tax included." Menus and any billing memorandum given to customers shall also include the statement "sales tax included" or indicate that the price being charged is a tax-included amount.

(4) "Factoring" shall mean the method used to determine the amount of the tax due when the tax has been collected as an unspecified part of the customer charge, including tax-included sales and sales made through vending machines and other coin-operated machines. To calculate gross receipts from a tax-included amount, the total amount of the tax-included receipts shall be divided by one plus the sum of state and local sale tax rates, stated as a decimal. The result of this calculation shall be the gross receipts that are reported on tax returns as the amount that is subject to state and local sales tax.

(e) Taxes collected by retailers shall be deemed to be held in trust until paid to the department. In addition, all funds paid by a customer to a retailer as taxes that exceed the taxes that are actually due shall be refunded to the consumer or, if the funds cannot be refunded, treated as public money that is held in trust for and payable to the state of Kansas.

(f) When billing the Kansas sales tax or use tax, an out-of-state retailer shall identify the tax being charged as Kansas tax, and not the tax of another state.

(Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 79-3604, 79-3605; effective Aug. 23, 2002.)

***** Authenticated Kansas Administrative Regulation *****