

Kansas Administrative Regulations

Kansas Department of Revenue

Article 19.—Kansas Retailers' Sales Tax

92-19-3b. Allowances for bad debts.

(a) General.

(1) For purposes of this regulation, "bad debt" shall mean any debt owed to or account receivable held by a retailer that can be claimed as a "wholly or partially worthless debt" deduction under 26 U.S.C. Section 166 that arose from the sale of goods or services upon which the retailer reported retailers' sales or use tax in a prior reporting period; and

(2)(A) A retailer shall be eligible to claim a bad debt allowance if the retailer meets the following conditions:

- (i) Was the original seller of the taxable goods or services;
- (ii) charged and remitted the retailers' sales or use tax on a sale that can be claimed as a worthless debt deduction under 26 U.S.C. Section 166; and
- (iii) has written off the bad debt as worthless or uncollectible in its books and records.

(B) A certified service provider shall be eligible to claim a bad debt allowance on behalf of a retailer that meets the conditions in paragraph (a)(2)(A) if the provider meets the requirements in subsection (g).

(3) A claim for a bad debt allowance shall be considered to be filed with the department according to one of the following:

(A) On the due date of the return for the reporting period in which the bad debt is written off as uncollectible in the retailer's books and records, when a deduction for the bad debt is taken on that return; or

(B) on the date that the retailer files a refund claim with the department, if part or all of a bad debt allowance is being claimed as a refund because the bad debt allowance was not taken as a deduction on the appropriate return or the deduction that was taken exceeded the amount of taxable gross receipts being reported on that return. The filing

date for a refund claim provided by K.S.A. 79-3609, and amendments thereto, shall be the later of either the postmark date on the refund request or the postmark date on the required supporting documentation.

(4) Each claim by a retailer for a deduction, credit, or refund based on a bad debt allowance shall be made in accordance with this regulation. K.A.R. 92-19-3c shall control the treatment of goods that are repossessed by a retailer after the retailer has taken a bad debt allowance on the underlying credit sale of goods defaulted on by the retailers' customer.

(5) After a retailer sells, factors, assigns, or otherwise transfers an account receivable, installment contract, or other similar debt instrument for a discount of any kind that authorizes a third party to collect customer payments, the retailer shall not be eligible to claim a bad debt allowance, credit, or refund for bad debts that arise under an instrument that was sold or transferred at a discount. A third party that purchases or otherwise obtains a debt instrument from the retailer, and any person that subsequently purchases or otherwise obtains the debt instrument, shall not be eligible to claim a bad debt allowance, credit, or refund for an underlying credit sale of goods or services defaulted on by the retailer's customer.

(b) Determining the amount of a bad debt allowance.

(1) The bad debt allowance that may be claimed for sales tax purposes shall be the difference between the federal worthless debt deduction calculated for the sale or account pursuant to 26 U.S.C. Section 166(b) and the applicable adjustments and exclusions to the federal worthless debt deduction specified in K.S.A. 79-3674 and amendments thereto.

(2) No anticipatory or statistical sampling method of estimating the amount of a sales-tax bad debt allowance shall be allowed except as specified in K.S.A. 79-3674(h) and amendments thereto.

(3) If a retailer maintains a reserve account for bad debts, only charges against the bad debt reserve that have been written off the retailer's books and records may be claimed as a bad debt allowance.

(4) The amount of sales tax that is deducted, credited, or refunded under a bad debt allowance shall not exceed the difference between the tax that the retailer remitted to

the department on a retail transaction and the tax that the retailer collected on the retail transaction.

(5) The amount of a bad debt allowance shall not include any finance charges, collection expenses, or repossession expenses that the retailer assigned to the consumer's account.

(6) Whenever the sales tax rate that was in effect at the time and place of the original sale is changed pursuant to a statutory rate change or the enactment or repeal of a local tax, the amount of the bad debt allowance shall be adjusted to account for the rate change before the bad debt allowance is claimed.

(7) In the absence of adequate records showing the contrary, it shall be presumed that the interest rate for financing charges that the retailer billed to a customer's delinquent account is the maximum rate of interest that the retailer charged on the same type of delinquent account during the same period that gave rise to the bad debt.

(8) No interest shall be paid by the department on any sales-tax bad debt deduction taken on a retailer's tax return. Interest on a refund claim filed to recover part or all of a bad debt allowance shall be computed as provided in subsection (e).

(c) How to claim a bad debt allowance.

(1)(A) A retailer that is required to file federal income tax returns shall claim a bad debt allowance as a deduction from the taxable gross receipts being reported on the return the retailer files for the reporting period in which the bad debt is charged off its books and records as uncollectible.

(B) A retailer that is not required to file federal income tax returns, including a church or other nonprofit entity, shall claim a bad debt allowance as a deduction from taxable gross receipts during the reporting period in which the bad debt is charged off its books and records, if the allowance would otherwise qualify for a worthless debt deduction under 26 U.S.C. Section 166 if the retailer were required to file federal income tax returns.

(2) If a retailer fails to timely claim a bad debt deduction on the return identified in paragraph (c)(1) or if a bad debt allowance exceeds the taxable gross receipts being reported on that return, the retailer shall file a refund request pursuant to K.S.A. 79-3609, and amendments thereto, to recover the bad debt allowance or the balance of the

allowance. The retailer shall not claim a bad debt allowance as a deduction so that a negative balance is reported on a return, as a deduction on an amended return filed for an earlier reporting period, or as a deduction on a return filed for a later period.

(3) A refund request that is filed to recover a bad debt allowance shall not include any other type of refund claim. The supporting documentation shall clearly state that the refund request is based on a claim for a bad debt allowance and shall identify the sales tax reporting period in which the worthless debt deduction could have first been claimed for federal income tax purposes.

(4) A refund claim based on a bad debt allowance shall be denied if the due date of the return for the reporting period in which the retailer first became eligible to write off the worthless debt for federal income tax purposes is outside the limitation period specified in K.S.A. 79-3609, and amendments thereto, for filing refund claims.

(d) Substantiating documentation.

(1) The burden of establishing the right to and the validity of a sales-tax bad debt allowance shall be on the retailer. In order to verify each sales tax bad debt allowance being claimed, the retailer shall retain records that show the following:

(A) The date when the retailer first became eligible to write off the worthless debt in the books and records that it maintains for federal income tax purposes;

(B) the amount of the worthless debt that was written off for federal income tax purposes and the amount of the worthless debt that is being claimed for Kansas sales tax purposes;

(C) any computations or adjustments made by the retailer to its federal worthless debt deduction to arrive at the bad debt allowance being claimed for Kansas sales tax purposes;

(D) any portion of the debt or worthless account that represents customer charges that were not taxed; and

(E) the amount of interest, finance charges, service charges, collection, and repossession costs that the retailer assigned to the debt or worthless account.

(2) The information specified in paragraphs (d)(1)(A) through (d)(1)(E) may be requested by the department at any time to substantiate a retailer's bad debt allowance claim.

(3) Any retailer that qualifies to claim a sales-tax bad debt allowance and whose volume and character of uncollectible or worthless accounts warrant an alternative method of substantiating the allowance may apply in writing to the director of taxation and ask to be allowed to maintain records other than those specified in this subsection. The retailer shall explain the reasons for the request, and the director may identify reasonable requirements that the retailer must meet as a condition to allowing the retailer to maintain records other than those specified in this subsection.

(e) A bad debt allowance submitted as a refund request. If a retailer claims a bad debt allowance by filing a refund request in accordance with paragraphs (c)(2) through (c)(4), the request shall be treated as the retailer's application for a refund. If a refund request based on a bad debt allowance is approved, either a credit memorandum or a refund payment may be issued by the department to the retailer for the approved amount. The amount credited or refunded shall not include interest, unless a credit memorandum or refund payment is not issued within the time provided for refunds by K.S.A. 79-3609, and amendments thereto. If a credit memo or refund payment is issued after the time provided for refunds, interest shall be computed from the later of either the filing date of the refund request or the filing date of the supporting documentation required by K.S.A. 79-3693, and amendments thereto.

(f) Recovery of allowances previously taken. If a retailer collects payment for goods or services or repossesses goods that were the basis of a bad debt allowance, the retailer shall apply the payment first proportionally to the selling price of the goods or services and the corresponding sales tax that remains unpaid and then to any other charges that are owed on the customer's account, including interest, service charges, and collection costs billed to the customer. The retailer shall report the payment amount that is apportioned to the selling price of the taxable goods or services as part of its taxable gross receipts for the period in which the payment is received.

(g) Certified service providers.

(1) If a retailer's filing responsibilities have been assumed by a certified service provider, the certified service provider may claim, on the retailer's behalf, any bad debt allowance that the retailer could claim under this regulation. The certified service provider shall provide a credit or issue a refund to the retailer for the full amount of any

bad debt allowance that the provider recovers. No person other than the retailer who reported the taxable transaction and reported tax to the department, or a retailer's certified service provider, shall be entitled to claim a bad debt allowance that is based on a worthless debt or uncollectible account.

(2) If the books and records of the retailer or certified service provider claiming a sales-tax bad debt allowance support an allocation of the sales-tax bad debts among the member states on a particular customer's uncollectible account, the allocation shall be allowed pursuant to K.S.A. 79-3674, and amendments thereto.

(Authorized by K.S.A. 2010 Supp. 75-5155 and 79-3618; implementing K.S.A. 2010 Supp. 79-3609, 79-3674, and 79-3693; effective April 1, 2011.)

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