

Kansas Administrative Regulations

Kansas Department of Revenue

Article 19.—Kansas Retailers' Sales Tax

92-19-66e. Project exemptions.

(a) "Project exemption" means a type of sales tax exemption that allows a qualifying entity to pass its exempt status through a contractor to suppliers when the contractor purchases materials for use in improving the entity's real property. K.S.A. 79-3606(d), K.S.A. 79-3606(e), and K.S.A. 79-3606(cc), and amendments thereto, identify the entities that may qualify for a project exemption.

(b) Project exemptions shall be limited to exempting purchases by contractors for construction projects performed for qualifying entities that have secured a project exemption certificate. Project exemption certificates shall be considered to provide a specific, limited exemption that contractors may claim for a single construction project of limited duration and shall not create an express or implied agency relationship between the exempt entity, the contractor, or the supplier. For purposes of this regulation, "contractor" means the general contractor, subcontractors, and repairmen, unless the context clearly indicates otherwise. "Supplier" means retail vendors of construction materials and other building supplies.

(c) Project exemption certificates may be issued by the department of revenue or by an entity that has been designated by the secretary of revenue as an agent of the department for purposes of issuing the certificates. Only entities that are entitled to be granted a project exemption under K.S.A. 79-3606(d) or K.S.A. 79-3606(e), and amendments thereto, may be designated as an agent of the department for this purpose. Businesses that qualify for project exemption because of economic development laws shall not be granted agency status. For purposes of this regulation, "the secretary of revenue" or the "secretary" means the secretary of revenue or that individual's designee.

(d) Entities that have not been designated as agents of the department shall apply to the department for a project exemption certificate for each construction project. Upon

approval of the application, a project exemption certificate shall be issued by the department directly to the entity making application.

(e) Each application to the department for a project exemption certificate shall provide the following information:

- (1) The exempt entity's name and address;
- (2) the general contractor's name and address;
- (3) the project location, description, and the job number being assigned to the project by the entity;
- (4) the starting date for construction;
- (5) the estimated completion date of the project; and
- (6) any additional information required on forms approved by the department for use in applying for project exemption.

(f) Requests by an entity for agency status to issue its own project exemption certificates shall be made on forms issued by the department. Each entity's request for agency status shall be approved or denied in writing by the secretary of revenue.

(g) Each entity that is authorized to issue its own project exemption certificates shall meet these requirements:

- (1) Use certificate forms that have been approved by the department;
- (2) issue certificates in a numbered sequence;
- (3) record each project exemption certificate number when the certificate is issued;
- (4) maintain records that contain the information required in subsection (e);
- (5) maintain records in a form that is acceptable to the department; and
- (6) establish procedures for releasing the information in its records to department auditors.

(h) All records that concern an entity's issuance of project exemption certificates shall be made available to the department for inspection during normal business hours. Entities that receive authorization to issue their own project exemption certificates may be required to file quarterly reports with the department. Forms for certifying the contents of its records on project exemptions for purposes of the hearsay exception requirements of K.S.A. 60-460(m), K.S.A. 60-460(n), and K.S.A. 60-460(o), and amendments thereto, shall be made available to authorized entities by the department

upon request. An entity's authorization to issue project exemption certificates may be revoked if the entity fails to maintain proper records, issues certificates for projects that do not qualify for exemption, refuses to make information available to the department, has backdated a project exemption certificate, or for other good cause.

(i) An entity that is authorized to issue its own project exemption certificates may issue certificates only for wholly owned projects. It shall not issue certificates for joint projects that involve separate entities, including joint projects between a municipality and a school, educational institution, other governmental unit, or a nonprofit corporation. When a project involves two or more entities, the entities shall file a joint application for project exemption with the department.

(j) An entity that issues a project exemption certificate for a project that does not qualify for exemption shall be liable for all taxes that would have otherwise been paid on the project by contractors who worked on the project, together with interest and penalty. Assessments may be issued based on projections of tax liability from material cost records and other records.

(k) When an exempt entity buys construction materials that are billed to and paid for by the exempt entity, the purchases shall be exempt without a project exemption certificate. Only indirect purchases made by an entity's contractor shall require a project exemption certificate for exemption. Project exemption certificates shall not be issued for direct purchases or for projects that do not involve improvements to real property.

(l) Each exempt entity shall maintain the original project exemption certificate as part of its records and provide photostatic copies to the project's general contractor for distribution to subcontractors, repairmen and suppliers. Each subcontractor, repairman, or supplier who is presented with a project exemption certificate or who uses one to exempt purchases shall maintain a copy of the certificate as part of its records. Each supplier shall inscribe the project exemption number on invoices or other billing documents issued to contractors, subcontractors, or repairmen who claim exemption under a certificate. Suppliers may honor a project exemption certificate only when the sales being exempted are consistent with the dates and other information contained in the certificate.

(m) Project exemption certificates shall be considered to operate prospectively. Each certificate shall be issued for a specific project of limited duration and shall contain an expiration date. If an entity qualifies for a project exemption but fails to secure or issue a certificate before purchases for the project are made, contractors shall pay tax on their purchases. An exempt entity that fails to secure or issue a project exemption certificate in time for a contractor to secure exemption from its suppliers shall seek a refund from the department in accordance with subsection (n) and shall not backdate the certificate or refuse to pay the tax to the contractor.

(n)(1) Any exempt entity that fails to secure a project exemption certificate in time for a contractor to secure exemption for part or all of its purchases may apply to the department for permission to seek from its contractors' suppliers a refund of taxes on sales that would have been exempt had a project exemption certificate been secured in time for its contractors to claim exemption on their purchases. The refund request shall be accompanied by the following documents or shall show the following:

(A) Proof that the project qualified for project exemption; and

(B) affidavits from the contractor, subcontractors, and repairmen verifying the amount of taxes they paid to suppliers on purchases for the project. The affidavit shall be supported by a schedule listing the taxes paid by the contractor, subcontractor, and repairmen; the supplier to whom the taxes were paid; and the date of the sale. Copies of invoices and other documentation that verifies the tax payments listed in the schedule shall accompany the affidavit and schedule. The affidavit shall include a waiver by all contractors, subcontractors, and repairmen that relinquish all claims to the refund.

(2) Each application shall be reviewed by the department. If the department determines that the sales to a contractor, subcontractor, or repairman would have been exempt had a project exemption certificate been obtained before purchases were made, the entity shall be provided with written authorization for the entity to seek a refund from the suppliers for the scheduled taxes paid by the contractors, subcontractors, and repairmen. To secure the refund, the entities shall submit the refund authorization to the supplier under the provisions of K.A.R. 92-19-49a.

(o) Each contractor who makes exempt purchases under a project exemption certificate shall maintain adequate records to show disposition of the materials,

supplies, and services that were purchased exempt. Upon completion of an exempt project, each contractor shall furnish a sworn statement to the exempt entity indicating that all purchases made exempt under the project exemption certificate were entitled to exemption under the act. Forms for these affidavits shall be furnished by the department.

(p) A project exemption certificate shall not relieve a contractor from liability for taxes on materials and supplies that are not incorporated or consumed on an exempt project. Any material purchased under a project exemption certificate that has not been consumed or incorporated into the project or that has not been returned to the supplier for credit shall be subject to sales tax. Each contractor shall file a return and remit tax on the material directly to the department. This return shall be filed for the reporting period that follows the month in which the contractor determines that the materials or supplies were not used in the exempt project.

(Authorized by and implementing K.S.A. 79-3606, 79-3618; effective June 26, 1998.)

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