

Kansas Administrative Regulations

Kansas Department of Revenue

Article 19.—Kansas Retailers' Sales Tax

92-19-3a. Credit sales, conditional sales, and other sales and service transactions that allow deferred payment.

(a) For purposes of this regulation, K.A.R. 92-19-3b, K.A.R. 92-19-3c, and K.A.R. 92-19-55b, the following definitions shall apply:

(1) "Conditional sale" means a sales transaction made pursuant to a written agreement that is treated as a sale of goods for federal income tax purposes in which the buyer gains immediate possession or control of the goods but the seller or a financial institution retains title to or a security interest in the goods to ensure its future receipt of full payment before clear title is transferred to the buyer in possession or control of the goods. Conditional sale contracts include "financing leases."

(2) "Credit charge" means interest, finance, and carrying charges from credit extended on the sale of goods or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the buyer.

(3) "Credit sale" means a sale of goods or services under an agreement that provides for the deferred payment of the purchase price. Credit sales shall include sales made under the following:

(A) An installment contract that transfers title and possession of the goods to the buyer at the time of purchase, but allows payment to be made in periodic installments; and

(B) a revolving credit contract that extends a line of credit to a buyer that allows purchases to be charged against the account and provides for periodic billing that requires payment of part of, and allows for payment of all of, the credit balance owed by the buyer.

(4) "Creditor" means an entity or person to whom money is owed.

(5) "Financial institution" means a bank, savings and loan, credit union, or other finance company licensed under the provisions of the Kansas uniform consumer credit

code as specified in K.S.A. 79-3602, and amendments thereto, for isolated or occasional sales.

(6) "Financing lease" means a conditional-sale contract that is denominated a lease, but that is intended to finance a lessee's purchase of goods or its continued possession of goods under a sale-leaseback agreement. A lessor shall be presumed to have entered into a financing lease if the lessor accounts for the lease transaction as a financing agreement for federal income tax purposes. The term "capital lease" shall be considered synonymous with "financing lease."

(7) "Goods" has the same meaning as "tangible personal property," which is specified in K.S.A. 79-3602, and amendments thereto.

(8) "Invoice" means a paper or electronic bill of sale or similar dated document containing an itemized list of goods or services sold to the buyer that specifies the selling price of the goods or services and complies with the requirements of K.S.A. 79-3648 and amendments thereto, when an itemized charge is taxable.

(9) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order shall be deemed accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

(10) "Operating lease" has the meaning specified in K.A.R. 92-19-55b.

(11) "Purchase price" has the meaning of "sales or selling price" specified in K.S.A. 79-3602, and amendments thereto.

(12) "Rain check" means that the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

(13) "Repossessed goods" means goods sold on credit that a retailer or other creditor reclaims as allowed by law after a buyer or debtor defaults on installment payments.

(14) "Returned goods" means goods that a buyer returns to a retailer upon the parties' cancellation of the original sales contract when the retailer either credits or refunds the full selling price of the goods and associated sales tax to the buyer.

Returned goods shall not include goods accepted in trade or barter, goods repossessed or recaptured by legal process, and goods secured pursuant to the consumer's abandonment of the sales contract or other voluntary surrender.

(15) "Sales tax" or "tax" means Kansas retailers' sales tax, Kansas retailers' compensating use tax, and any local retailers' sales or use tax that is levied in addition to the state tax.

(16) "Services" has the meaning specified in K.S.A. 79-3602, and amendments thereto.

(b) Nothing in this regulation, K.A.R. 92-19-3b, K.A.R. 92-19-3c, or K.A.R. 92-19-55b shall be construed as modifying any of the following:

(1) Any requirement of any Kansas certificate-of-title statute or supporting regulation;

(2) any provision of the retailers' sales tax act that allows a retailer to discount the selling price of goods or services based on a trade-in, coupon, or other price reduction that is allowed by a retailer and taken by a buyer on a sale; or

(3) any requirement imposed on creditors or consumers by the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq., and amendments thereto.

(c)(1) When a retailer makes credit sales, the retailer may report and pay tax to the department on the total cash and other payments the retailer receives during each reporting period or, if the retailer's books and records are regularly kept on the accrual basis, on the total receipts accrued in its books and records during each reporting period. A retailer that has filed six or more sales tax returns using the same method of accounting that it uses for its federal income tax reporting shall be presumed to have knowingly elected to use that method of accounting for sales tax purposes and to have benefited from its election. Regardless of the reasons for electing to use one method of accounting, a retailer shall continue to use that method of accounting to report its credit and other retail sales unless the director of taxation authorizes the retailer in writing to change its method of accounting for all future sales tax returns or the internal revenue service directs or authorizes the retailer to change its method of accounting for federal income tax purposes.

(2) A retailer shall not be disqualified from reporting sales on a cash-receipts basis because it makes credit sales or has accounts receivable. However, when a retailer that

reports credit sales on a cash-receipts basis sells, factors, assigns, or otherwise transfers an installment contract, account receivable, or similar instrument, sales tax shall become due on the total amount of the remaining payments and shall be reported on the return for the period in which the retailer is paid or credited for the contract or receivable.

(3) For the purposes of administering and enforcing the requirements of the Kansas retailers' sales tax act for retailers that report tax based on the total receipts accrued during a reporting period, the date contained on the invoice given to the buyer shall be presumed to be the date the retailer recognizes the receipts in its books and records as earned.

(4) If a retailer finds that it is a hardship to report and remit sales tax in accordance with the requirements in this subsection, the retailer may apply in writing to the director of taxation for permission to start reporting its sales using a different accounting method. The retailer shall fully explain the reasons for the request, and the director may identify reasonable requirements that the retailer shall meet as a condition to allowing the retailer to change the method of accounting it uses to report sales tax.

(d)(1) Each retailer that accounts for its credit sales on the accrual basis shall bill the buyer the full amount of tax that is due on the purchase price of the goods or services sold on credit and shall source and report the sale as if it were a cash sale. The purchase price shall not be reduced by any expense that the retailer attributes to the sale or service and recovers from the buyer even when the retailer bills the expense as a separate line-item charge or on a separate invoice.

(2) When a credit sale is made, any credit charge that is paid by a buyer in addition to the purchase price of goods or services shall be deemed not to be part of the purchase price and shall not be subject to sales tax if both of the following conditions are met:

(A) The invoice, bill of sale, or similar document given to the buyer separately states the credit charge and the selling price of the goods or services that were sold on credit.

(B) The extension of credit was contracted for by the parties, provided for by standard industry custom or practice, or otherwise granted by the retailer, including by

issuing an invoice that unilaterally informs the buyer that interest at a stated rate will be added each month to any outstanding credit balance.

(3) A retailer's charges for the extension of credit that meet the requirements of paragraph (d)(2) shall not be included in the retailer's report of gross receipts.

(4) A retailer that makes credit sales shall maintain records that separately show the selling price of the goods or services, the corresponding amount of sales tax charged, the customer's credit balance, and any interest, financing, or carrying charge that has been added to that balance.

(5) A retailer shall not collect sales tax on charges to customers for insufficient funds checks or closed-account checks. The receipts from these charges shall not be included in the retailers report of gross receipts.

(6) This subsection shall not apply to the types of charges related to credit-card use that are specified in subsection (e).

(e)(1) If a retailer increases the selling price of goods or services for a buyer who uses a credit card to compensate for interchange fees or other charges that the credit-card company will later deduct from the payment it forwards to the retailer's account, these increases shall be considered to be part of the selling price of the goods or services and shall be subject to tax.

(2) Interchange fees and other charges that a credit-card company deducts from a participating retailer's account shall be deemed charges for the financial services that the credit-card company has rendered for the retailer and shall not be deducted from the retailer's report of gross receipts or otherwise used to reduce the amount of sales tax being reported.

(f)(1) A progress payment shall mean a payment made to a contractor as work progresses on a construction project that may be conditioned on the percentage of work completed, the stage of work completed, the costs incurred by the contractor, a payment schedule, or some other basis. Each contractor who issues a bill or statement for a progress payment for a period in which the contractor performed taxable labor services shall report sales tax on the taxable services as part of its gross receipts.

(2) If a contractor reports sales tax on the cash basis, it shall report the taxable labor services it performed during the period covered by a progress payment on the return it

files for the sales-tax reporting period in which it receives the progress payment. If a contractor reports sales tax on the accrual basis, it shall report the taxable services it performed during the period covered by a progress-billing statement on the return it files for the sales-tax reporting period in which it recognizes the charges on its progress-billing statement in its books and records as earned.

(g)(1) Unless otherwise provided by statute, each retailer that makes a layaway sale shall report sales tax on the total selling price of the goods sold on layaway when the final payment is made and the goods are delivered to the buyer. The tax rate that is applied to a layaway sale shall be the rate that is in effect at the time of delivery. An exemption may be claimed on a layaway sale only if the exemption is in effect at the time of delivery. If an unpaid balance remains when the goods are delivered, the transaction shall be reported as a credit sale that is consummated when the goods are delivered to the buyer.

(2) Sales tax shall be applied to a purchase made under a rain check in the same way that the tax is applied to a purchase made under a layaway sale.

(h)(1) Each retailer shall collect and remit tax in accordance with this subsection on any taxable sales of goods the retailer makes under a financing lease agreement or other conditional sale, unless the lease or sale satisfies one of the requirements listed in paragraphs (i)(2)(A) through (C).

(2) When an accrual-basis retailer sells goods at retail and the sale is financed under a financing lease, the retailer shall collect and remit sales tax at the time of sale on the full selling price of the goods. Sales tax shall be collected and remitted in this manner even if the retailer transfers title to the goods to a financial institution and possession of the goods to the third-party lessee or if the retailer retains title to the goods and transfers possession to the lessee. Lease payments that a third-party lessee makes to a financial institution or retailer to discharge its loan-repayment obligations under a financing lease or other conditional sale shall not be subject to tax.

(3) A financial institution shall not claim a resale exemption for the purchase of goods that the financial institution is financing under a financing lease agreement.

(4) The transfer of title to the lessee upon completion of the lease payments required under a financing lease agreement shall not be subject to tax.

(i)(1) A contract shall be treated as a financing lease regardless of whether the underlying transaction is characterized as a lease or rental under generally accepted accounting principles, the internal revenue code, the uniform commercial code, K.S.A. 84-1-101 et seq. and amendments thereto, or any other provision of federal, state, or local law, if the contract requires the lessee to possess or control the goods under a security agreement or deferred payment plan that requires the transfer of possession or control of the goods to the lessee under either of the following:

(A) A security agreement or deferred payment plan that requires the transfer of title to the lessee upon completion of the required payments; or

(B) an agreement that requires the transfer of title upon completion of the required installment payments plus the additional payment of an option price, and the option price does not exceed the greater of \$100 or 1% of the total required payments.

(2) Unless paragraph (i)(1) requires a contract to be treated as a financing lease, a contract shall be treated as an operating lease and not as a financing lease if the contract meets one of the following requirements:

(A) Contains a provision that allows the lessor to claim federal income tax depreciation benefits for the leased goods;

(B) allows the lessee to terminate the agreement at any time by returning the goods and making all lease payments due to the date of return; or

(C) qualifies as a Kansas consumer lease-purchase agreement under K.S.A. 50-680 et seq., and amendments thereto.

(j)(1) A late payment charge or penalty billed to a customer shall be exempt under this regulation only if the late payment charge or penalty is imposed for nonpayment of a credit balance that is owed under the parties' agreement for the extension of credit, a financing lease, or other conditional sale agreement.

(2) A late payment charge or penalty that is billed to a customer by a regulated utility, cable provider, telecommunications company, or other entity that operates under the authority granted by law or contract by a municipal, county, state, or federal governmental unit is not a credit charge imposed for the extension of credit and shall be subject to sales tax.

(3) A late payment charge or penalty imposed under an operating lease or rental agreement shall be subject to tax in accordance with subsection (d) of K.A.R. 92-19-55b.

(Authorized by K.S.A. 2010 Supp. 75-5155 and K.S.A. 2010 Supp. 79-3618; implementing K.S.A. 2010 Supp. 75-5155, K.S.A. 2010 Supp. 79-3602, K.S.A. 2010 Supp. 79-3603, K.S.A. 2010 Supp. 79-3609, and K.S.A. 2010 Supp. 79-3618; effective April 1, 2011.)

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