

Kansas Administrative Regulations

Kansas Department of Revenue

Article 19.—Kansas Retailers' Sales Tax

92-19-49d. Review of refund applications; processing of refund claims.

(a) Statute of limitations.

(1) Whenever a retailer or consumer that has filed a sales or compensating use tax return seeks a refund for the erroneous payment of the tax, penalty, or interest, the refund claim shall be filed within three years from the due date of the return for the reporting period as specified in K.S.A. 79-3607, and amendments thereto, unless the director of taxation has extended the time for filing the refund request pursuant to K.S.A. 79-3650(b), and amendments thereto.

(2) A written agreement may be entered into by the secretary and the taxpayer to extend the period within which the taxpayer may file a refund application, and an assessment may be made by the secretary. If such a mutual agreement is entered into, any additional interest due on an assessment that is in excess of 48 months shall be waived. This agreement shall be entered into before the expiration of the three-year statute of limitations.

(3) The provisions of K.S.A. 60-206, and amendments thereto, for the computation of time shall apply to determine the timeliness of the filing of a refund claim. Each refund claim shall be presumed to have been filed with the department on its postmark date.

(4) A person against whom an assessment or administrative decision has become final shall not be entitled to pay the amount of the assessment and then file a refund claim for the amount paid.

(b) Incomplete refund applications.

(1) A refund application that is incomplete, not supported by the required documentation, or otherwise fails to meet the requirements specified in K.A.R. 92-19-49c, whether submitted to the department or to a retailer, shall not be considered to be a refund claim or refund request for the purpose of any of the following:

(A) Tolling the statute of limitations provisions of K.S.A. 79-3609, and amendments thereto;

(B) commencing the running of the 60-day provision of K.S.A. 79-3609(d), and amendments thereto, for payment of refunds without interest; or

(C) extending the time for filing the refund application or refund request beyond the three-year statute of limitations under the provisions of K.S.A. 79-3650(b), and amendments thereto.

(2)(A) If a refund application is incomplete, not supported by the required documentation, or otherwise fails to meet the requirements specified in K.A.R. 92-19-49c, the substance or merits of the incomplete refund application shall not be reviewed by the department, and the incomplete application shall be returned to the applicant. At that time, the applicant shall be notified in writing of the actions, corrections, information, or additional documentation that is needed to complete a new refund application. The applicant also shall be provided with a written description of the method by which an informal conference may be requested pursuant to K.S.A. 79-3226, and amendments thereto, to request a review of the determination that the refund application is incomplete.

(B) Each review of the department's determination that the taxpayer submitted a refund application that was incomplete, not supported by the required documentation, or otherwise failed to meet the requirements specified in K.A.R. 92-19-49c shall be limited to determining whether the refund application, as originally submitted, complied with the requirements of K.A.R. 92-19-49c by providing sufficient information and documentation to allow the refund application to be verified and processed. If, upon review at the informal conference, it is determined that the refund application failed to meet the requirements specified in K.A.R. 92-19-49c when submitted so that the refund application could not be verified and processed, the applicant shall be required to file a new refund application for the refund being claimed.

(c) Review of refund claims.

(1) Each refund application that meets the requirements specified in K.A.R. 92-19-49c so that it can be verified and processed shall be reviewed by the department as a refund claim and its validity determined. Each claimant shall be notified in writing of the

department's determination and, if the refund claim is denied in whole or in part, shall be provided with a written description of the method by which an informal conference pursuant to K.S.A. 79-3226, and amendments thereto, may be requested. Each denial of a refund claim by the department shall be final, unless the claimant timely requests an informal conference pursuant to K.S.A. 79-3226, and amendments thereto.

(2) Once an informal conference is requested, an informal conference shall be held by the secretary or designee, and a written final determination shall be issued by the secretary or designee, in accordance with K.S.A. 79-3226, and amendments thereto. The written final determination shall constitute a final agency action subject to administrative review by the Kansas board of tax appeals, as provided in K.S.A. 74-2438 and amendments thereto.

(d) Offsetting overpayments against deficiencies.

(1) If the department determines that a refund is due, the refund may first be set off against any outstanding tax liability for a tax that is administered by the department and owed by the person to whom the refund is ultimately due. Any refund amount that remains may be set off against any other outstanding state liabilities or shall be refunded. A retailer shall be considered to be the person to whom the refund is ultimately due under this subsection if the retailer previously credited or refunded the tax to the consumer. This person shall be provided with written notice of the setoff and informed of the right to seek administrative review of the setoff pursuant to K.S.A. 79-3226, and amendments thereto.

(2) If the department determines, upon review of a tax return, that there has been an overpayment of tax for the taxable period to which the return relates, either of the following actions may be taken by the department:

(A) Crediting the overpayment amount to the taxpayer without requiring the taxpayer to file a refund claim; or

(B) setting off the overpayment in accordance with subsection (c).

(e) Audits.

(1) If an audit by the department discovers that both underpayments and overpayments of a tax have been made in different reporting periods, the tax

overpayments shall be credited against the tax underpayments if the taxpayer submits an affidavit that meets the requirements of paragraph (e)(2).

(2) To be entitled to the provision specified in paragraph (e)(1), the taxpayer shall provide the department with an affidavit signed by the taxpayer's owner, partner, or corporate officer that attests that the taxpayer has not claimed a duplicate refund or taken a credit on a return and will not claim a duplicate refund or credit for those taxes in the future. A retailer shall not be allowed to utilize the provisions of this subsection or any other setoff provisions for taxes that the taxpayer collected from its customers and has not credited or refunded to the customer.

(3) Once an audit engagement letter is issued by the department to a taxpayer, the taxpayer shall submit all refund claims for any tax overpayment that is alleged to have occurred during the audit period to the department to be considered as part of the audit review.

(f) Audits based on sampling.

(1) After a business pays a liability or accepts a refund that was determined under an audit assessment that applied a sampling technique to an established population, the population that served as the base for the sampling portion of the assessment shall be closed to all additional assessments and refunds.

(2) Refund applications based on sampling techniques shall not be allowed.

(g) Erroneous refunds. If the department erroneously refunds or credits any sales or compensating tax to a retailer or consumer, a notice of tax assessment for the erroneous refund or credit may be issued by the department in either of the following periods:

(1) Within three years from the date the refund was made; or

(2) if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact, within two years from the date of discovery of the fraud or misrepresentation.

The amount of the assessment shall be limited to the amount of the erroneous refund including interest, unless fraud is involved.

(Authorized by K.S.A. 2004 Supp. 75-5155 and K.S.A. 2004 Supp. 79-3618;
implementing K.S.A. 2004 Supp. 79-3233j, K.S.A. 2004 Supp. 79-3607, K.S.A. 2004
Supp. 79-3609, and K.S.A. 2004 Supp. 79-3650; effective May 27, 2005.)

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