

Kansas Administrative Regulations

Kansas Department of Revenue

Article 19.—Kansas Retailers' Sales Tax

92-19-35a. Securities: surety bonds, escrow accounts, and cash bonds.

(a) General. Pursuant to K.S.A. 79-3616 and amendments thereto, a retailer may be required to post a security before or after a registration certificate is issued. If a security is required, a written demand for security shall be sent to the retailer. If a person fails or refuses to post a security as required within 30 days of mailing of the notice, issuance of a registration certificate may be refused by the director of taxation, or a certificate that has been issued may be cancelled by the director.

(b) Refusal to issue a certificate or cancellation of a certificate.

(1) If a written demand for a security is sent to a person who is applying for a registration certificate, the person who receives the demand shall either post the security or object to the demand. To object, the person shall submit the objection in writing within 30 days from the date that the demand was mailed. Once an objection is received, a hearing shall be scheduled by the secretary or secretary's designee to determine whether the posting of the security is an appropriate prerequisite for issuing the registration certificate.

(2) If an existing registration certificate is to be cancelled because a security has not been posted within 30 days of the demand, the certificate holder shall be notified in writing of the director's intention to cancel the certificate and the date when the cancellation is final. The certificate shall be cancelled on the date specified in the notice, unless the certificate holder objects in writing within 30 days from the date that the notice of intention to cancel is mailed. If a certificate holder objects to the cancellation, a hearing shall be scheduled by the secretary or secretary's designee to determine whether cancellation of the certificate for failure to post a security is appropriate.

(c) When required for active businesses.

(1) Businesses with chronic delinquencies. A retailer shall post a security if the retailer has had four or more delinquencies during the last 24 months for sales and use

taxes or if the retailer has had six or more delinquencies during the last 24 months for taxes imposed under chapter 79 of the Kansas statutes annotated and amendments thereto, including withholding tax, income tax, sales and use taxes, liquor excise tax, and all other excise taxes. Delinquencies shall include the failure to file a return, the filing of a late return, the filing of an improper return, nonpayment, late payment, and payment by an insufficient funds check. The simultaneous late filing of the return and the late payment of tax shall count as one delinquency. A delinquency shall be excused if the retailer establishes that, had a timely request been made under K.A.R. 92-19-5a, good cause would have existed for an extension.

(2) When required of a new applicant. A security shall be required of a new applicant if the applicant is substantially similar to a person who would have been required to post a security because of past delinquencies. An applicant shall be deemed to be similar to the extent that the applicant is owned or controlled by a person or persons who owned or controlled a previously registered retailer that became delinquent. Substantial similarity may be established by facts that tend to show common ownership or control of both businesses.

(d) Determination of security amount. The amount of a security for an annual filer shall be \$25, and the security shall be made only as a cash bond. If a security is required of a monthly or quarterly filer, the amount of the security shall be fixed by the director and shall be equal to at least the average tax liability for state and local taxes for six months, or \$1,000, whichever is greater. The average tax liability shall be based on the previous 12-month period, if there was a reporting history for those months. Amounts based on the average liability for a monthly or quarterly reporting period shall be rounded to the next higher, even \$100 amount. If a retailer has no reporting history, the amount of the security may be based on the estimated tax liability as shown on the registration application, the predecessor's tax liability at the location specified on the registration application, and other factors that are based on the department's experience with similar businesses. After one year, the security amount fixed by the director for a new account may be increased or decreased based upon the retailer's compliance record, payment history, and annual average sales tax liability.

(e) Types of security. Acceptable types of security shall include the following:

(1) Money posted or deposited with the department as a cash bond. A cash bond may be required by the director to be paid in guaranteed funds by means of a cashier's check or money order. Cash bonds shall not pay interest;

(2) a surety bond issued by a bonding company that is authorized to do business in Kansas by the Kansas insurance commission. Each surety bond shall be issued on a form prescribed by the department and shall bear the seal of the insurance company, the effective date, and the signature of the applicant. If a bond is signed by an agent or other attorney-in-fact for the insurance company, the bond shall be accompanied by a power of attorney that grants to the attorney-in-fact the power to obligate the company for this type of liability; and

(3) an escrow account with a Kansas financial institution that is entered into on a form prescribed by the department. Escrow funds may be held in a savings account or certificate of deposit and shall be payable to the department upon demand. Interest earned on an escrow account may be paid to the retailer unless the director has made demand for payment on the account. Other than interest, an escrow account shall not be accessible to the retailer or to creditors of the retailer until the account is released in writing by the director.

(f) Release or cancellation of the security. A security that has been posted by a retailer who files on a monthly or quarterly basis may be released to the retailer upon request if the retailer has, for 24 consecutive months, timely filed and paid all returns required to be filed under chapter 79 of the Kansas statutes annotated, and amendments thereto. The 24-month compliance requirement shall begin on the day the security is received by the department. If a retailer does not meet the compliance requirements, the security shall continue to be required until the taxpayer has been in compliance for 24 consecutive months from the date of the latest noncompliance. A \$25 cash bond required to be posted by a retailer who files on an annual basis shall be held by the department until the retailer terminates business or is required to file returns on a monthly or quarterly basis.

(Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 79-3616; effective Aug. 23, 2002.)

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