

Kansas Administrative Regulations

Kansas Department of Revenue

Article 19.—Kansas Retailers' Sales Tax

92-19-53. Consumed in production.

(a) In order for purchases of tangible personal property to qualify for exemption under K.S.A. 1986 Supp. 79-3606(n) as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1 and amendments, the following requirements must be met:

- (1) The tangible personal property must be essential or necessary to the process;
- (2) the tangible personal property must be used in the actual process;
- (3) the tangible personal property must be immediately consumed or dissipated in the process;
- (4) the tangible personal property must be used in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the providing of services or the irrigation of crops for ultimate sale at retail in the regular course of business; and
- (5) the tangible personal property cannot be reusable for such purposes. The identity of the buyer, seller or item purchased is immaterial. Whether the purchase qualifies for exemption is determined by how the item is used in the production or processing activity. An item may be taxable for one use and exempt for another use, even though purchased by the same consumer. Each transaction shall be separately measured against the statutes and regulations to determine the taxability of the transaction.

(b) For the purposes of determining whether tangible personal property is consumed in the providing of services, the term "service" refers only to taxable services enumerated under the sales tax act. Each person providing a nontaxable service shall pay sales tax on all articles of tangible personal property and all services purchased by the person to provide the nontaxable service, and may not claim an exemption from sales tax.

(c) "Used in the actual process" means the use of the tangible personal property used shall:

(1) Be integral and essential to the production or processing activity;

(2) occur at the location where the production or processing activity is carried on; and

(3) occur during the production activity.

The fact that a particular item of tangible personal property may be considered important to a production process does not, of itself, mean that the tangible personal property is used in the actual process. The following uses of tangible personal property do not qualify for exemption from sales tax as consumed in production: shipping, testing, repairing, servicing, maintaining, cleaning the equipment and the physical plant, and storing. Tangible personal property used in the administration of the business and wholesale, commercial or retail facilities or buildings do not qualify for exemption from sales tax as consumed in production.

(d) "Immediately consumed or dissipated" means that tangible personal property shall be consumed or destroyed both economically and physically in a time reasonably requisite in the production or processing activity. The fact that tangible personal property may be used for only one production or processing activity and then discarded, or that tangible personal property is rendered obsolete or worthless in a short time is not the determining factor. Purchases of tangible personal property used in a repetitive function to produce articles of tangible personal property designed to be sold to consumers and not immediately consumed or dissipated are subject to sales tax. Tangible personal property that is specifically produced to perform a specific job for a specific consumer and has no other value other than as scrap, may qualify for exemption from sales tax as consumed in production, if the purchased property meets the other requirements under the exemption. Tangible personal property which breaks, depreciates, wears out or becomes obsolete, albeit in a short time span, does not qualify for exemption from sales tax as consumed in production.

(e) Natural gas, electricity, heat and water consumed by machinery and equipment actually used to produce, manufacture, process, mine, drill, refine or compound tangible

personal property, provide taxable services or irrigate crops for resale in the regular course of business, qualify for exemption as consumed in production.

(f) All purchases of tangible personal property by contractors, subcontractors, or repairmen for incorporation into any structure or for use in altering, servicing, repairing or maintaining personal property or personal property that has been affixed to real property are subject to sales tax unless specifically exempted by K.S.A. 1986 Supp. 79-3606(d), (e) as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1.

Contractors, subcontractors, repairmen, and consumers shall not purchase materials exempt from sales tax as consumed in the production of services whether or not the project is original construction.

(Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec 108, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

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