

Kansas Administrative Regulations

Kansas Department of Revenue

Article 19.—Kansas Retailers' Sales Tax

92-19-49c. Refund applications; refund claims; required forms.

(a) Definition.

(1) "Refund claim" shall mean an application for the refund of sales or compensating use tax, penalty, or interest submitted in writing on a form prescribed by the department that has been completed and is accompanied by all documentation needed to verify and process the claim. A refund application that is incomplete or is not documented as required by this regulation shall not be considered to be a refund claim. As used in these regulations, the term "refund claim" may include a claim for payment, a credit, or an entitlement to a deduction.

(2) Each refund application shall be submitted on the appropriate form prescribed by the department for the kind of refund being requested. The refund application may be required by the department to be filed electronically. Refund application forms may be obtained from the department.

(3) Each agent, representative, or other third party filing a refund application on behalf of another shall submit a power of attorney that authorizes the agent, representative, or other third party to act on behalf of the claimant.

(b) Retailer-filed refund applications.

(1) Any business or individual who is registered with the department as a retailer and who reported and remitted sales tax to the department that was not owed, was remitted in error, or was an overpayment may apply for a refund. Each registered retailer shall have a continuing duty to correct any errors in sales tax returns filed with the department and to enable purchasers to obtain refunds of taxes that were overpaid or paid in error.

(2) Each refund claim filed by an entity that files sales or compensating use tax returns shall be treated as an application to adjust or amend the return. The amended tax return shall be subject to verification by examination of the taxpayer's records.

(3) Refund applications shall be filed on the appropriate form and shall be completed in the manner prescribed by the form. Each refund application shall contain all the information requested and shall be accompanied by all additional documentation prescribed by the form and this regulation that is needed to determine the validity of the claim and verify and process the claim. Each refund application that contains insufficient information or documentation to verify and process the application shall be returned to the applicant with directions to file a new, complete application. If a refund application has been returned by the department, a refund claim shall not be considered to have been filed until a new application is submitted that contains sufficient information and is supported by sufficient documentation to verify and process the claim.

(4) The information provided on each retailer-filed refund application form or accompanying the form shall include the following:

(A) An amended return for each period for which a refund is sought, which shall contain the retailer's current name, mailing address, employee identification number, and Kansas sales tax registration number;

(B) the name and telephone number of the person whom the department should contact if additional information is needed;

(C) an explanation of the reason why a refund is due, which may include an overpayment due to mathematical or clerical errors, the payment of tax on an exempt sale, or other explanation. If applicable, the explanation shall include a detailed, factual description of how the items sold were used by the consumer and an explanation of the legal theory that underlies the refund claim. A statement of such usage that only references Kansas statutes and Kansas administrative regulations shall be deemed an insufficient explanation of the factual basis for a refund;

(D) if tax has been refunded to the consumer, the amount, the name of the refund recipient, and an explanation of how the refund was made, whether by cash, check, credit, or other means;

(E) a schedule listing each invoice in chronological order that includes the name and address of the purchaser, a description of the items sold, the date of purchase, the invoice number, the amount subject to tax, the amount of tax collected, the reporting period and jurisdiction code for the tax, the location of the sale, the account codes, the

department codes, and a detailed statement of usage of the item purchased. If the claimant or its agent maintains its records or prepares the schedule in an electronic, machine-sensible format, all schedules submitted to support the refund claim shall be provided in an electronic, machine-sensible format in addition to the paper document;

(F) the signature of the payee or the owner, a partner, or an officer of the business listed as payee, and the signature of the retailer or the owner, a partner, or an officer of the business listed as the retailer; and

(G) any additional information required by the application form that is needed to verify and process the specific refund application, including employment data for a refund pursuant to K.S.A. 79-3606(cc), and amendments thereto.

(5) The documentation provided with a retailer-filed refund application form shall include a copy of each of the following:

(A) A properly completed exemption certificate from the consumer, if the consumer is seeking a refund based on an exemption claim;

(B) if the retailer has refunded taxes to the consumer, a cancelled check or irrevocable credit memo issued by the retailer showing that the retailer has credited or refunded the tax previously collected from the consumer, a written agreement that the refund shall be jointly issued to the retailer and the consumer, or other proof of repayment; and

(C) all invoices pertaining to the schedule required to be submitted under paragraph(b)(4)(E) and any other documentation needed to verify and process the specific refund claim being made in the schedule, which may include credit memos, contracts, job cost records, tax accrual worksheets with refund items identified, charts of account, and any other documentation, including employment data for claims related to K.S.A. 79-3606(cc), and amendments thereto.

(6) Each business that files consumers' compensating use tax returns with the department shall comply with the requirements of this subsection when filing a refund claim for consumers' compensating use tax that the business accrued, reported, and paid to the department.

(c) Consumer-filed refund applications.

(1) Except as authorized by K.S.A. 79-3650 and amendments thereto and as provided by paragraph (b)(6) of this regulation, a consumer seeking a refund of retailers' sales or compensating use tax shall request the refund from the retailer that collected the tax on the sale.

(2)(A) A consumer that paid tax to a retailer may apply directly to the department for a refund if the consumer submits an application and supporting documentation together with an affidavit that verifies any of the following:

(i) The retailer that collected the tax is no longer in business.

(ii) The retailer has moved and cannot be located.

(iii) The retailer is insolvent and is financially unable to make the refund.

(iv) The consumer has attempted in good faith to obtain the refund from the retailer and can document that the retailer refuses or is unavailable to refund the tax or has refused to act in a timely manner on the consumer's refund application.

(B) The documentation required to demonstrate that a retailer refused to refund the tax under paragraph (c)(2)(A)(iv) shall include a written denial of the consumer's refund request issued by the retailer. The documentation required to demonstrate that a retailer did not act on the refund request in a timely manner under paragraph (c)(2)(A)(iv) shall include a copy of the refund request sent to the retailer by certified mail at least 60 days before the consumer filed the refund application with the department. This documentation shall include the consumer's refund application, a copy of the certified mail receipt, and the consumer's refund application, a copy of the certified mail receipt, and the consumer's affidavit stating that it acted in good faith in attempting to obtain the refund from the retailer.

(C) The consumer's affidavit shall state the date that the refund request was submitted to the retailer and shall identify the information and documentation included with the request. A copy of each piece of documentation shall be submitted to the department with the consumer's affidavit.

(D) The retailer may be contacted by the department to confirm that the consumer has acted in good faith in attempting to obtain the refund from the retailer. As used in this regulation, "good faith" shall mean that the consumer has provided the retailer with all of the information and documentation needed to validate and process the refund

request, has complied with the requirements specified in K.S.A. 79-3650(a) and amendments thereto, and has otherwise made a reasonable attempt to obtain the refund from the retailer. The mere fact that a retailer agrees to allow the consumer to file a refund application directly with the department shall not satisfy the requirements of K.S.A. 79-3650(a), and amendments thereto, and shall not constitute a good faith attempt to obtain the refund from the retailer.

(E) For purposes of refund claims filed with the department pursuant to K.S.A. 79-3650 and amendments thereto, if the director of taxation finds that the retailer failed to act on the consumer's refund request in a timely manner, the period of limitations applicable to the filing of the consumer's refund claim may be extended by the director by not more than 90 days. As used in K.S.A. 79-3650 and amendments thereto and in this regulation, "timely manner" shall mean within 60 days after the retailer received written notice of the consumer's refund request. As used in K.S.A. 79-3650 and amendments thereto, "proper showing" shall mean the submission to the director of the consumer's affidavit, the completed refund application, and all supporting information and documentation that is needed to verify and process the refund.

(F) If the director finds that a refund application, information, and documentation submitted by a consumer to a retailer are insufficient to verify and process the refund claim, the limitations period for filing the consumer's refund claim with the department shall not be extended, and the refund application shall not be reviewed by the department but shall instead be returned to the consumer.

(3) The information provided on each consumer-filed refund application form or accompanying the form shall include the following:

- (A) The consumer's name, current mailing address, and telephone number;
- (B) the name and telephone number of the person whom the department should contact if additional information is needed;
- (C) the retailer's name, current mailing address, and telephone number;
- (D) a description of the items purchased, the date of purchase, the location of the purchase, the invoice number, the amount subject to tax, and the amount of tax paid;
- (E) if applicable, a properly completed exemption certificate. The exemption certificate shall include a detailed factual description of how the items sold were used by

the consumer. A statement of usage on an exemption certificate that only references Kansas statutes and Kansas administrative regulations shall be deemed an insufficient explanation of the factual basis for a refund;

(F) an explanation of the reason why a refund is due. If applicable, this explanation shall include a detailed, factual description of how the items sold were used by the consumer. A statement of usage that only references Kansas statutes and regulations shall be deemed an insufficient explanation of the factual basis for a refund;

(G) a schedule listing each invoice in chronological order that includes the name and address of the retailer, a description of the items sold, the date of purchase, the invoice number, the amount subject to tax, the amount of tax paid, the reporting period and jurisdiction code for the tax, the account codes, the department codes, the location of the purchase, and a detailed statement of usage for the purchase. If the claimant or the claimant's agent maintains its records or prepares the schedule in an electronic, machine-sensible format, all schedules submitted to support the refund claim shall be provided in an electronic, machine-sensible format in addition to the paper document;

(H) the signature of either the consumer or a business owner, partner, or officer of the business; and

(I) any additional information required by the form that is needed to verify and process the refund, including employment data for a refund pursuant to K.S.A. 79-3606(cc), and amendments thereto.

(4) The documentation provided with each consumer-filed refund application form shall include a copy of each of the following:

(A) A properly completed exemption certificate from the consumer, if the consumer is claiming refund entitlement based on an exemption;

(B) all original invoices pertaining to the refund claim placed in chronological order, with monthly subtotals, credit memos, contracts, cancelled checks, tax accrual worksheets, charts of accounts, and any other documentation required to verify the specific refund claim being made; and

(C) a written statement signed by the consumer stating that the consumer has not and will not seek a duplicate refund from the retailer.

(Authorized by K.S.A. 2004 Supp. 75-5155 and K.S.A. 2004 Supp. 79-3618;
implementing 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 *****