

Kansas Administrative Regulations

Kansas Department of Revenue

Article 19.—Kansas Retailers' Sales Tax

92-19-30. Motor vehicles or trailers; isolated or occasional sale.

(a)(1) An isolated or occasional sale of motor vehicle or trailer is a sale made between private individuals or other entities who, at the time of the sale, are not retailers registered to collect and remit sales or use tax on the sale of such a vehicle or trailer.

(2) Kansas motor vehicle dealers and trailer dealers are retailers and cannot make isolated or occasional sales of vehicles or trailers. These dealers shall collect sales tax at the time of the sale on each taxable retail sale of a motor vehicle or trailer.

(b)(1) Unless a sale is one that is excepted from the imposition of sales tax by K.S.A. 79-3603(o) or exempted from tax under K.S.A. 79-3606, and amendments thereto, sales tax shall be levied on the isolated or occasional sale of a motor vehicle or trailer. Tax on the isolated or occasional sale of a motor vehicle or trailer shall be paid to the county treasurer when the purchaser or other transferee applies for a certificate of title or a certificate of title and registration or to the director of taxation, as provided in paragraph (c)(3).

(2) When a person who has acquired a vehicle in an isolated or occasional sales transaction applies for a certificate of title or certificate of title and registration, the county treasurer shall collect the sales tax that is due along with a service fee of 50 cents, and give the applicant a receipt for the tax and fee paid. A certificate of title or certificate of title and registration shall not be issued until the transferee pays the tax and applicable fee or proves to the satisfaction of the county treasurer or the director of taxation that the transfer is not taxable.

(c)(1) County treasurers shall be assisted by the director of taxation or director of vehicles in determining whether or not a transaction is taxable or exempt. Refusal to issue a certificate of title or certificate of title and registration for a vehicle may be requested by the director of taxation or director of vehicles until sales tax is paid. Sales tax shall be collected by a county treasurer if any doubt exists as to an applicant's

exemption claim. An applicant who pays sales tax may file a refund claim with the director of taxation if the applicant believes the tax has been erroneously collected by county treasurer or department of revenue.

(2) Each determination made by a county treasurer to exempt an isolated or occasional sale may be reviewed by the director of taxation. Following this review, a sales tax assessment may be issued to the vehicle registrant for any sales tax that is unpaid or underpaid because of clerical error, misinformation, or other cause.

(3) Any sales tax that is finally determined to be due under an assessment shall be paid to the director of taxation. Payment of sales or use tax on isolated or occasional sales of motor vehicles or trailers may be made to the director of taxation instead of the county treasurer, as provided in paragraph (b)(1), to correct any other underpayment or as an accommodation to the taxpayer.

(d) As a general rule, the base for computing the tax shall be the actual selling price of the vehicle. However, the tax shall be computed on the fair market value of the vehicle by the county treasurer or the director of taxation under either of the following circumstances:

(1) The selling price of the vehicle is unknown; or

(2) the stated selling price is not indicative of, and bears no reasonable relationship to, the fair market value of the vehicle or the average retail value as shown in the latest publication of the national automobile dealers' association official used car guide book.

(e) The actual selling price shall be the base for computing the tax on the sale of wrecked or damaged vehicles.

(f)(1) "Sale" or "sales" means the exchange of property, a sale for money, and every other transaction in which consideration is given, whether conditional or otherwise.

(2) "Vehicle" means motor vehicle or trailer.

(3) "Transferor" means the seller, donor, or other person who sells, gives away, or otherwise parts with the vehicle.

(4) "Transferee" means the purchaser, donee, or other person who purchases, is given, or otherwise acquires ownership of the vehicle.

(g) K.S.A. 79-3603(o), and amendments thereto, which imposes sales tax on isolated or occasional sale of trailers and motor vehicles, excepts the following transfers or sales from the tax imposition on these isolated or occasional sales:

(1) Transfers by an individual to a corporation solely in exchange for stock in the corporation;

(2) transfers from one corporation to another corporation when done as part of the transfer of all the corporate assets; and

(3) sales of automobiles, light trucks, trailers or motorcycles between immediate family members.

(h) "Immediate family member" is any person in a class that is defined by statute to mean lineal ascendants and descendants and their spouses. Since a person may have lineal ascendants and descendants and may also be the spouse of someone who has lineal ascendants and descendants, this class includes the grandfather, grandmother, father, mother, son, daughter, and adopted child of the person; the spouses of these ascendants and descendants; the grandfather, grandmother, father, mother, son, daughter, and adopted child of the person's spouse; and any other ascendants and descendants that are further removed, including great-grandparents and great-grandchildren. The sale or transfer of an automobile, light truck, trailer or motorcycle between members of this class shall be exempt from sales tax.

(i) Certain transfers of motor vehicles or trailers are not sales, as defined in paragraph (f)(1), and shall not be taxed. These include name changes, transfers by gift, and certain transfers made by operation of law. The following rules shall apply to these transfers.

(1) A transfer shall be presumed to be a gift when the transferee is the spouse, mother, father, brother, sister, child, grandmother or grandfather, aunt, uncle, niece, or nephew of the transferor and money is not exchanged for the vehicle. A gift shall also be presumed when these relatives trade or exchange vehicles and money is not exchanged as part of the trade or exchange. However, if money is exchanged for the vehicle, the transfer shall be taxable, unless the sale is exempted as set forth in subsection (h).

(2) A vehicle transfer by gift is not a sale and shall not be taxed. To qualify as a gift, the vehicle shall be given without any consideration and with an intention on the part of the donor that the transfer is a gift. When the relationship of the parties is not one of the relationships set forth above in paragraph (i)(1), the transferee claiming the transfer is a gift shall submit proof of this claim to the satisfaction of the county treasurer or director of taxation.

(3) The change of an owner's name on the title when there is no actual transfer of vehicle ownership to a different person or entity is not a sale and shall not be taxed. However, the transfer of a motor vehicle or trailer from a corporation to an individual shall be taxed since there is a change of ownership from one legal entity to another. The vehicle transfer shall be presumed to be the corporation's payment of a wage, dividend, bonus, or other benefit to the officer, employee, shareholder, or other transferee.

(4) A transfer to an heir or legatee by will or pursuant to the inheritance or intestacy laws of a state is not a sale and shall not be taxed. A certified copy of the probate court order making the distribution shall be filed with the county treasurer.

(5) The sale to a person who takes title to a vehicle with the intention of transferring it to the winner of a drawing or raffle shall be taxed. The subsequent transfer of the vehicle to the winner of a drawing or raffle is a gift from the donor to the winner and shall not be taxed. When a donor pays a motor vehicle dealer for a vehicle and the vehicle is transferred from the dealer directly to the winner of a drawing or raffle, the gift is considered to be the payment made for the automobile rather than the automobile itself, and the winner shall be liable for the sales tax that is charged by the dealer on the vehicle sale. Whenever a vehicle is won as a prize and sales tax has not been paid by either the vehicle donor or vehicle winner to this state or another state, the winner shall pay Kansas sales or use tax when the vehicle is registered with the county treasurer.

(6) When the title to a vehicle is transferred to the holder of an encumbrance as a result of repossession under the terms of a written agreement entered into at the time of original purchase by the purchaser and encumbrance holder, the transfer is not a sale and shall not be taxed. However, any registration or subsequent sale of the vehicle by the encumbrance holder shall be taxed.

(7) When a lender grants a debtor permission to redeem a vehicle pursuant to K.S.A. 84-9-506, and amendments thereto, the redemption of the vehicle by the debtor is not a sale and shall not be taxed.

(8) When a lien holder acquires title to a vehicle through a court-ordered foreclosure of a mechanic's lien, landlord's lien, storage lien, or other statutory lien, the transfer of title to the lien holder shall be exempt if the lien holder does not register the vehicle. However, any registration or subsequent sale of the vehicle by the lien holder shall be taxed. The redemption of a vehicle from a lien holder by a debtor who satisfies the underlying debt is not a sale and shall not be taxed.

(j) The following transfers shall be considered sales, and shall be subject to sales tax.

(1) K.S.A. 79-3602(h)(2), and amendments thereto, allows a credit or discount for a vehicle that is traded for another vehicle. When vehicles of different value are traded by private individuals, the person who pays cash or tenders some other consideration in addition to the vehicle being traded or exchanged shall pay sales tax on the amount of the cash payment or on the fair market value of the consideration. In this trade, sales tax shall not be due from the person who traded or exchanged a vehicle but did not pay any additional cash or provide any additional consideration. Each person claiming a sales tax credit or discount for a vehicle that is traded shall file an affidavit with the county treasurer on a form furnished by the department of revenue that contains information necessary to support the credit or discount being claimed.

When the stated cash amount or stated value of the other consideration is not indicative of, and bears no reasonable relationship to, the difference between the fair market value of the vehicle traded and the fair market value of the vehicle received by the purchaser, the tax shall be computed by the county treasurer or the director of taxation on the difference between the fair market value of the vehicles or the difference between the average retail value of the vehicles as shown in the latest publication of the national automobile dealers' association official used car guide book.

(2) The purchase of a vehicle that the purchaser intends to give to someone else shall be taxed, even though tax is not due on the subsequent transfer from the purchaser to the donee.

(3) A transfer of a vehicle from a partner to the partnership or from a partnership to a partner shall be presumed to be a taxable transfer. A transfer from the partner to the partnership shall be presumed to be made in consideration of an increased partnership interest. A transfer from the partnership to the partner shall be presumed to be made for services rendered to the partnership or for other value passing between the partner and the partnership.

(4) If a donor gives a donee a gift of cash or other property for the purpose of purchasing a vehicle, the donee shall be liable for the tax, if the vehicle is purchased.

(5) The transfer of a vehicle in exchange for the transferee's assumption of an obligation to pay all or part of an encumbrance on the vehicle is a sale and shall be taxed, unless the sale is between immediate family members or is exempt under K.S.A. 79-3606, and amendments thereto. When the transfer does not involve a gift and is not otherwise exempt, the tax base shall be the sum of any payment made by the buyer to the seller plus the amount of the encumbrance being assumed. Sales tax shall be computed as set forth in subsection (d) of this regulation if this amount is not indicative of, or bears no reasonable relationship to the fair market value of the vehicle. When the transfer represents a gift of part of the value of the vehicle that has been established in accordance with paragraphs (i)(1) or (i)(2) of this regulation and is not otherwise exempt, the tax base shall be the sum of any payments made by the buyer to the seller plus the amount of the encumbrance being assumed, regardless of the fair market value of the vehicle.

(6) When a vehicle is purchased to replace a vehicle that has been stolen or destroyed by accident, fire, or other adversity, the purchase of the replacement vehicle is not exempt and shall be taxed. Each purchase of a replacement vehicle shall be taxed whether the replacement vehicle is purchased by the owner of the vehicle that was stolen or destroyed or by an insurance company that is obligated to provide a replacement vehicle.

(7) A transfer of a vehicle from a corporation to an officer, shareholder, board member, or employee shall be presumed to be a taxable transfer and shall be presumed to be made in consideration for services rendered to the corporation or for other value passing between the corporation and transferee.

(k)(1) Each transferee claiming exemption shall complete an affidavit form furnished by the department of revenue and file it with the county treasurer when the vehicle is registered. The exemption affidavit shall be completed in its entirety and shall contain the names, addresses, and telephone numbers of the transferor and transferee; the make, year, model and body style of the motor vehicle or trailer; and any additional information that is needed to support the exemption claim. The affidavit shall contain facts in detail sufficient to clearly bring the transferee within the exemption being claimed.

(2) Each transferee claiming a family relationship as the basis for the exemption of a vehicle sale or as the basis for the presumption of a gift may be required to file an additional affidavit that establishes the relationship.

(3) Exemption affidavits that are not correct in both substance and form shall not be accepted by the county treasurer, and the tax shall be collected if any doubt exists as to the validity of the exemption claim.

(4) Any taxpayer may file a refund claim with the director of taxation if the taxpayer believes the tax has been erroneously collected by the county treasurer or the director.

(l)(1) When a motor vehicle or trailer is purchased out of state in an isolated or occasional sale, the purchaser shall pay Kansas state and local use tax to the county treasurer upon application for a certificate of title or certificate of title and registration. When a motor vehicle or trailer is purchased from an out-of-state dealer who is not registered to collect and remit Kansas state and local retailers' use tax and has not collected sales tax on the sale for the state of purchase, the purchaser shall pay Kansas state and local use tax to the county treasurer upon application for a certificate of title or certificate of title and registration.

(2) When the purchaser has paid state and local sales tax to another state at a rate that is less than Kansas state and local use tax rates where the vehicle is registered, the purchaser shall pay Kansas state and local use tax to the county treasurer at a rate that is equal to the difference between the combined state and local tax rates for the Kansas location and the combined state and local tax rates that were used to determine the tax paid to the other state.

(Authorized by K.S.A. 8-132, 79-3618; implementing K.S.A. 8-132, K.S.A. 79-3602, 79-3603, 79-3604; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; amended June 26, 1998.)

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