

Kansas Administrative Regulations

Kansas Department of Revenue

Article 19.—Kansas Retailers' Sales Tax

92-19-82. Direct pay permits.

(a)(1) "Certificate," as used in this regulation, shall mean a direct payment certificate issued by the department to a permit holder that explains direct pay authority to retailers and can be provided to retailers in lieu of a direct pay permit.

(2) "Department" shall mean the Kansas department of revenue.

(3) "Kansas sales and use tax laws" shall mean the following:

(A) Chapters 36 and 37 of article 79 of the Kansas statutes annotated, and amendments thereto;

(B) K.S.A. 12-187 *et seq.*, and amendments thereto; and

(C) articles 19, 20, and 21 of these regulations.

(4) "Permit" shall mean a direct payment permit issued by the secretary that, under K.S.A. 79-3619 and amendments thereto, allows the holder of the permit to accrue and pay state and local sales and use taxes directly to the department of revenue.

(5) "Secretary" shall mean the secretary of revenue or the designee of the secretary.

(b) Application for permit. Each application for a permit shall be submitted in writing to the secretary. The application shall contain the applicant's name, address, and sales and use tax account numbers, the location of the place or places of business for which direct payment of tax will be made, the business's standard industrial classification number or its equivalent, and any other information prescribed by the secretary.

(c) Qualification process and requirements.

(1) Each applicant for a permit shall demonstrate the applicant's ability to comply with the Kansas sales and use tax laws. The applicant shall provide a description of the applicant's accounting system and shall demonstrate that the system calculates the correct amount of state and local tax.

(2) The applicant shall provide documentation of at least one of the following:

(A) The applicant makes annual purchases of at least \$1 million of tangible personal property for business use and not for resale.

(B) The applicant purchases substantial amounts of property for business use under circumstances that normally make it difficult or impractical at the time of purchase to determine whether the property will be subject to or exempt from sales or use tax.

(3) The applicant shall provide a statement that explains the business purpose for the permit and demonstrates how the grant of direct payment authority will meet one or more of the following criteria:

(A) Insure tax compliance;

(B) reduce the administrative work needed to determine taxability, or to collect, verify, calculate, or remit tax;

(C) improve compliance with Kansas tax laws;

(D) provide accurate compliance if the determination of taxability of the item is difficult or impractical at the time of purchase;

(E) more accurately calculate tax using new or electronic business processes, including electronic data interchange, evaluated receipts settlement, and procurement cards; or

(F) more accurately determine and calculate tax, based on a showing that the applicant has significantly automated or centralized its purchasing or accounting processes and that the applicant's business activities require it to comply with the laws and regulations of multiple state and local jurisdictions.

(4) Within 90 days of the date the secretary receives the application, the applicant shall be notified by the secretary of whether the permit is granted or denied or whether a conference shall be scheduled because additional documentation is required to complete the review.

(d) Recordkeeping requirements. Each permit holder shall maintain records necessary to determine the correct tax liability. These records shall be made available upon request by the secretary pursuant to K.S.A. 79-3610 and K.S.A. 79-3611, and amendments thereto. Books and records shall be retained in accordance with K.S.A. 79-3609, and amendments thereto, and K.A.R. 92-19-4b.

(e) Tax reporting. Each permit holder shall accrue and pay tax directly to the department for all taxable transactions on which direct payment authority applies or is claimed by the permit holder. The tax shall be reported on forms prescribed by the department. The tax owed shall be due and payable on the next tax return due following the date on which a determination of taxability is made, or in the exercise of reasonable care should be made, for a given transaction, unless otherwise provided by written agreement between the taxpayer and the department.

(f) Certain transactions not permitted. A permit holder shall not use the permit in connection with the following purchases:

- (1) Taxable meals or beverages;
- (2) taxable lodging or services related to lodging;
- (3) admission to places of amusement, entertainment or athletic events, and charges for use of amusement devices;
- (4) memberships, dues, fees, or other similar charges paid to private and public clubs or other organizations;
- (5) taxable fees to participate in sports, games, and other recreational activities;
- (6) motor vehicles, aircraft, boats, and other tangible personal property required to be licensed or titled with any taxing authority;
- (7) telephone or telegraph services, subscriber television or radio services, telephone answering services, mobile phone services, beeper services, and other similar services;
- (8) real property construction services taxable under K.S.A. 79-3603, and amendments thereto; and
- (9) any other purchases prescribed by the secretary or agreed to by the permit holder and the secretary.

(g) Permit holder duties. The permit holder shall provide a copy of the permit or certificate to each vendor from whom the holder purchases tangible personal property or services, other than to those identified in subsection (f). Once presented, a permit holder shall not be required to pay the tax to the vendor as prescribed by the Kansas sales and use tax laws, and the vendor who retains the permit or certificate as part of the vendor's records shall not be required to collect sales tax. The permit holder shall

accrue and pay the tax directly to the department on all taxable transactions not taxed at the time of the sale. A vendor who has been presented a permit or certificate may rely on the permit or certificate until it is withdrawn by the permit holder or notice is otherwise given that the authority has been withdrawn. If the secretary and permit holder agree in writing, the permit holder may maintain accounting records in sufficient detail to show in summary, and in respect to each transaction, the amount of sales and use taxes paid to vendors who have been not been asked to honor a permit or certificate for each reporting period.

(h) Vendor responsibilities. Receipt and maintenance of a copy of a direct payment permit or certificate shall relieve the vendor of the responsibility to collect tax on sales made to a permit holder on qualifying transactions. Each vendor who makes sales upon which the tax is not collected because of this regulation shall maintain records that identify each sale, the amount of the sale, and the purchaser. The vendor's receipts from these sales shall not be subject to the tax levied under the Kansas sales and use tax laws.

(i) Local taxes. Each permit holder who makes taxable purchases of tangible personal property or services shall report and pay the applicable state and local tax on the purchases. A permit holder shall not use a permit as a device to defer payment of tax on purchases, or to avoid accruing and paying local sales tax to the appropriate local taxing jurisdiction pursuant to the local sales tax statutes.

(j) Revocation of permit.

(1) A direct payment permit shall not be transferable, and its use shall not be assigned to third parties, including contractors. A permit may be revoked by the secretary at any time if the secretary determines that the holder has not complied with the provisions of the law or that revocation is in the best interest of the department. The department's interests shall include increased audit expenses caused by permits, including larger staff, additional travel expenses, and adoption of new systems for tax reporting and auditing. The written notice of revocation shall be effective at the end of the direct payment permit holder's next reporting period.

(2) If a business is reorganized but ongoing business operations are unchanged, the new entity shall be allowed 120 days to apply for a new permit. During the 120-day period, the previous permit shall remain in effect.

(3) Each person whose permit is voluntarily forfeited or is revoked by the department shall return the permit to the department and shall immediately notify all vendors from whom purchases of taxable items are made, advising them that the permit and any certificates are no longer valid and should not be honored. Failure to give this notification shall be a violation of K.S.A. 79-3651(e) and amendments thereto.

(Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 2001 Supp. 79-3619; effective Aug. 23, 2002.)

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