

Kansas Administrative Regulations

Kansas Department of Revenue

Article 19.—Kansas Retailers' Sales Tax

92-19-66b. Labor services.

(a) Each contractor, subcontractor, and repairman shall be responsible for collecting and remitting sales tax on taxable services performed for others, including taxable services performed for other contractors. A contractor, subcontractor, or repairman shall not issue or accept a resale exemption certificate that claims an exemption from sales tax for services being purchased from or sold to another contractor, subcontractor, or repairman.

(b) The taxable base for all contracts involving the application or installation of tangible personal property shall be the difference between the contract price and the cost of material, supplies, and payments to subcontractors, including sales or compensating tax paid by the contractor on the materials, supplies, and subcontractor charges purchased by the contractor to complete the contract.

(c) Each contractor, subcontractor, or repairman who does not separately state the amount of sales tax for services performed in that person's contract, bid estimates, customer billings, or other evidence of the transaction shall state in the document that all applicable sales taxes are included in the selling price. If the statement does not appear in the contract, bid estimate, billing, or other evidence of the transaction, it shall be presumed that the sales tax was not charged to the consumer. Each retailer shall carry the burden of proving that the sales tax was charged to the consumer and properly remitted to the state.

(d) The service of installing or applying tangible personal property in connection with the original construction, which is the first or initial construction of a new building or facility, shall not be subject to sales tax. The erection of a building or facility on a site previously occupied by a building or facility that has been demolished, razed, or dismantled shall be considered to be original construction if the building or facility is totally new, whether or not the old foundation was also demolished.

(e) The service of installing or applying tangible personal property for the addition of an entire room or floor to the exterior of an existing building or facility shall not be subject to sales tax. Any replacement, remodeling, restoration, repair, renovation, or reconstruction done in the interior of an existing building or facility necessary to the construction of an entire room or floor added to the exterior of an existing building or facility shall be considered to be original construction and not subject to sales tax when any of these conditions is met.

(1) Except for the addition of the entire room or floor to the exterior of the building or facility, the work performed inside the existing building or facility would not be necessary.

(2) The work being done in the existing building or facility is necessary to support the addition of the new room or floor being added to the exterior of the building, facility, or the machinery contained therein.

(3) The support to the entire room or floor being added to the exterior of the existing building or facility is the direct causal factor of the construction being performed to the interior of the existing building or facility.

If none of the three requirements can be met, the services performed to the interior of the existing building or facility shall be subject to sales tax, and the cost of services rendered in connection with the entire project shall be allocated between the addition of the new room or floor and the services performed to the interior of the existing building or facility. Sales tax shall be collected and remitted for that portion of services allocated to those services performed to the interior of the existing building or facility.

(f) Services of installing or applying tangible personal property to complete unfinished portions of newly constructed buildings, facilities, shopping centers, and malls when space within the building, facility, center, or mall is leased or sold to the first or initial tenant of that space shall not be subject to sales tax. Services performed to install or apply tangible personal property for the completion of an unfinished portion of an existing building or facility shall be presumed not to be taxable when all of the following conditions are met.

(1) The service being rendered was called for in the original blueprint, building plan, or building specification at the time original construction of the building or facility was

started, including any change orders issued during the original construction of the building or facility.

(2) The completion of the unfinished portion of the building or facility is within a time that is reasonably close to the time of the original construction of the building or facility.

(3) The service rendered would have been performed at the time of the original construction of the building or facility, except for circumstances beyond the owner's control. Those circumstances shall not include instances in which the project is essentially completed and usable for the purposes intended, but the owner merely fell short of funds, or when the owner, after taking possession or occupancy of the building or facility, contracts for additional services.

(4) The owner or occupant is the first or initial owner or occupant of the building or facility.

(g) Sales tax shall not be imposed on the service of installing or applying tangible personal property for the purpose of restoring, reconstructing, or replacing a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion, or earthquake. This exemption shall not apply to restoration, reconstruction, or replacement of a building or facility due to normal deterioration resulting from the continuous exposure to the elements, or the obsolescence of the building or facility. Each retailer performing a service under this exemption shall secure an affidavit from the owner of the building or facility stating that the building or facility was damaged or destroyed by one or more of the above-mentioned causes. Each retailer shall retain the affidavit in the retailer's records for three years. The affidavit shall be in substantially the following form:

State of Kansas, County of

ss. _____

of lawful age, being first duly sworn, deposes, and states:

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Subscribed in my presence and duly sworn to before me, this
_____ day of _____, 19 _____.

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(Signature of Notary Public)

(h) Services performed to dismantle, demolish, raze, or destroy a building or facility or a portion of a building or facility shall be subject to sales tax. If the services are performed in connection with the original construction of a building or facility, and the building or facility is constructed on the same site, the service of dismantling, demolishing, razing, or destroying the original building or facility shall not be subject to sales tax.

(Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3603; effective May 1, 1988; amended June 26, 1998.)

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