

**NOTICE 13-05
(May 2013)**

**CHANGES TO REQUIREMENTS FOR CERTAIN REMOTE RETAILERS TO REGISTER AND COLLECT
AND REMIT KANSAS RETAILERS' SALES OR USE TAX**

During the 2013 Legislative Session, Senate Bill 83 was passed and signed into law. Changes made by the Bill in Sections 9 and 18 affect the duty of certain remote retailers to register with the Department, and collect and remit Kansas retailers' sales or use tax on taxable sales of tangible personal property for use, consumption or storage in this state, effective July 1, 2013.

Section 9 of Senate Bill 83 provides:

- (a) On and after July 1, 2013, if any person sells or leases tangible personal property to the state, a state department, a state agency or an agent thereof, that person and any affiliated person shall, as a prerequisite for any such sale or lease, register with the department of revenue as a retailer and comply with all legal requirements imposed on a retailer, including the requirement to collect and remit sales or use tax on all taxable sales of tangible personal property to customers in this state.
- (b) Any ruling, agreement or contract, whether written or oral, express or implied, between a retailer and this state's executive branch, or any other state agency or department, stating, agreeing or ruling that the retailer is not required to collect sales and use tax in this state despite the presence of a warehouse, distribution center or fulfillment center in the state that is owned or operated by the retailer or an affiliated person of the retailer shall be null and void, unless it is specifically approved by a majority vote of each of the chambers of the Kansas legislature.
- (c) As used in this section, "affiliated person" means any person that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code as the retailer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the retailer as a corporation that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code.

Section 18 of Senate Bill 83, effective July 1, 2013 (except that the newly enacted provisions contained in subparagraph (h)(2)(C) in this section will become effective on October 1, 2013), amends the definition of "retailer doing business in this state" at K.S.A. 2012 Supp. 79-3702(h)(1) as follows (deleted language shown as strike-through, added new language shown in italics):

(h) (1) “Retailer doing business in this state” or any like term, means:

(A) Any retailer ~~having or~~ maintaining in this state, permanently, temporarily, directly or indirectly through a subsidiary, agent or representative, an office, distribution house, sales house, warehouse or other place of business;

(B) any retailer ~~having~~ *utilizing* an employee, independent contractor, agent, representative, salesperson, canvasser or, solicitor *or other person* operating in this state either permanently or temporarily, ~~under the authority of the retailer or its subsidiary,~~ for the purpose of selling, delivering, installing, assembling, servicing, repairing, soliciting sales or the taking of orders for tangible personal property;

(C) any retailer, including a contractor, repair person or other service provider, who enters this state to perform services that are enumerated in K.S.A. 79-3603, and amendments thereto, and who is required to secure a retailer’s sales tax registration certificate before performing those services;

(D) any retailer deriving rental receipts from a lease of tangible personal property situated in this state;

~~(E) any person having a franchisee or licensee operating under its trade name if the franchisee or the licensee is required to collect the tax under the Kansas retailers’ sales tax act;~~

~~(F)~~ any person regularly maintaining a stock of tangible personal property in this state for sale in the normal course of business; and

~~(G)~~*(F)* any retailer who has any other contact with this state that would allow this state to require the retailer to collect and remit tax under the provisions of the constitution and laws of the United States.

(2) A retailer shall be presumed to be doing business in this state if *any of the following occur*:

(A) ~~Both of the following conditions exist:~~

~~(i) The retailer holds a substantial ownership interest in, or is owned in whole substantial part by, a retailer maintaining a sales location in Kansas; and~~

~~(ii) the retailer sells the same or a substantially similar line of products as the related Kansas retailer and does so under the same or a substantially similar business name, or the Kansas facilities or Kansas employees of the related Kansas retailer are used to advertise, promote or facilitate sales by the retailer to consumers.~~

~~(B) The retailer holds a substantial ownership interest in, or is owned in whole or in substantial part by, a business that maintains a distribution house, sales house, warehouse or similar place of business in Kansas that delivers property sold by the retailer to consumers.~~

~~(C) For purposes of paragraphs (A) and (B):~~

~~(i) “Substantial ownership interest” means an interest in an entity that is not less than the degree of ownership of equity interest in an entity that is specified by Section 78p of Title 15 of the United States Code, or any successor to that statute, with respect to a person other than a director~~

~~or officer; and~~

~~(ii) “ownership” means and includes both direct ownership, and indirect ownership through a parent, subsidiary or affiliate. Any person, other than a common carrier acting in its capacity as such, that has nexus with the state sufficient to require such person to collect and remit taxes under the provisions of the constitution and laws of the United States if such person were making taxable retail sales of tangible personal property or services in this state:~~

~~(i) Sells the same or a substantially similar line of products as the retailer and does so under the same or a substantially similar business name;~~

~~(ii) maintains a distribution house, sales house, warehouse or similar place of business in Kansas that delivers or facilitates the sale or delivery of property sold by the retailer to consumers;~~

~~(iii) uses trademarks, service marks, or trade names in the state that are the same or substantially similar to those used by the retailer;~~

~~(iv) delivers, installs, assembles or performs maintenance services for the retailer’s customers within the state;~~

~~(v) facilitates the retailer’s delivery of property to customers in the state by allowing the retailer’s customers to pick up property sold by the retailer at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in the state;~~

~~(vi) has a franchisee or licensee operating under its trade name if the franchisee or the licensee is required to collect the tax under the Kansas retailers’ sales tax act; or~~

~~(vii) conducts any other activities in the state that are significantly associated with the retailer’s ability to establish and maintain a market in the state for the retailer’s sales.~~

~~(B) Any affiliated person conducting activities in this state described in subparagraph (A) or (C) has nexus with this state sufficient to require such person to collect and remit taxes under the provisions of the constitution and laws of the United States if such person were making taxable retail sales of tangible personal property or services in this state.~~

~~(C) The retailer enters into an agreement with one or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link or an internet website, by telemarketing, by an in-person oral presentation, or otherwise, to the retailer, if the cumulative gross receipts from sales by the retailer to customers in the state who are referred to the retailer by all residents with this type of an agreement with the retailer is in excess of \$10,000 during the preceding 12 months. This presumption may be rebutted by submitting proof that the residents with whom the retailer has an agreement did not engage in any activity within the state that was significantly associated with the retailer’s ability to establish or maintain the retailer’s market in the state during the preceding 12 months. Such proof may consist of sworn written statements from all of the resi-~~

dents with whom the retailer has an agreement stating that they did not engage in any solicitation in the state on behalf of the retailer during the preceding year, provided that such statements were provided and obtained in good faith. This subparagraph shall take effect 90 days after the enactment of this statute and shall apply to sales made and uses occurring on or after the effective date of this subparagraph and without regard to the date the retailer and the resident entered into the agreement described in this subparagraph. The term "preceding 12 months" as used in this subparagraph includes the 12 months commencing prior to the effective date of this subparagraph.

(D) The presumptions in subparagraphs (A) and (B) may be rebutted by demonstrating that the activities of the person or affiliated person in the state are not significantly associated with the retailer's ability to establish or maintain a market in this state for the retailer's sales.

(3) The processing of orders electronically, by fax, telephone, the internet or other electronic ordering process, does not relieve a retailer of responsibility for collection of the tax from the purchaser if the retailer is doing business in this state pursuant to this section.

(i) "Director" means the director of taxation.

(j) As used in this section, "affiliated person" means any person that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code as the retailer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the retailer as a corporation that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code.

Pursuant to K.S.A. 79-3705e, it is the duty of every retailer doing business in this state making taxable sales of tangible personal property for use, storage or consumption in this state, to collect from the purchaser the Kansas state and local use tax due on the transaction. Each retailer collecting such tax shall timely report and remit it to the Department pursuant to K.S.A. 2012 Supp. 79-3706.

Taxpayer Assistance

Additional copies of this notice, forms or publications are available from our web site, www.ksrevenue.org. If you have questions about income tax, please contact:

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