

Notice

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Body:

KANSAS DEPARTMENT OF REVENUE

Office of Policy & Research

NOTICE 03-04

NEW "DESTINATION-BASED" SOURCING RULES FOR RETAILERS' SALES AND COMPENSATING USE TAX REVISED JUNE 25, 2010

In 2003 House Bill 2005, the Kansas Legislature adopted legislation intended to bring Kansas sales and use tax laws into conformity with the Streamlined Sales and Use Tax Agreement (Agreement) requirements. This Agreement is a product of the Streamlined Sales Tax Project (SSTP), a cooperative effort among several States and the business community, which responds to the concerns of merchants about the difficulties in dealing with different States' sales tax laws, and to State and local government concerns about loss of revenues from remote retail sales by mail-order, telephone and the Internet. The SSTP seeks to "level the playing field" between in-state and out-of-state merchants regarding collection of sales and use tax on retail sales to customers in the taxing State. The SSTP's goal is to make administration of different States' sales and use tax laws more uniform, efficient, and less burdensome on retailers. The SSTP seeks to encourage multi-state merchants to voluntarily register to collect and remit use tax on sales to customers in States where they may not have any physical presence or legal obligation to collect and remit use tax. More information on the SSTP, as well as the text of the Agreement, are available at the following website: www.streamlinedsalestax.org.

The Agreement contains certain uniformity provisions that States must adopt in order to be eligible to join. The Agreement takes effect once at least 10 States with at least 20% of the total population of States imposing sales tax have made the necessary statutory changes to meet the uniformity requirements. With the adoption of 2003 House Bill 2005, Kansas has amended its sales tax laws to conform to the uniformity requirements in the Agreement, and should be in a position to seek membership in the Agreement. These changes took effect on July 1, 2003.

The most significant changes to Kansas sales tax law required by the Agreement are the sourcing rules. They are found at Sections 1, and 15 through 19, of 2003 House Bill 2005. Beginning July 1, 2003, retailers must use these new "destination-based" sourcing rules to correctly identify the local sales tax to charge on a retail sales transaction. Under prior law, sales were generally sourced to the retailer's business location, for purposes of determining the local sales tax due. Thus, the local sales tax in effect at the retailer's business location applied to the transaction. This is an "origin-based" sourcing rule. Under the new "destination-based" sourcing rules, sales generally are sourced to the location where the purchaser receives the item sold. Retailers who ship or deliver sold items to their customers' locations will be required to collect the local sales tax in effect where delivery is made.

General Destination-Based Sourcing Rules

2003 House Bill 2005 requires use of "destination-based" sourcing rules to determine the applicable local sales or use

tax on a given sales transaction, subject to certain exceptions. These sourcing rules apply, regardless of whether the taxable item sold is characterized as tangible personal property or a service.

(1) Under the “destination-based” sourcing rules, the sale is “sourced” to the retailer’s business location if the buyer receives the merchandise there.

(2) If the retailer delivers or ships the merchandise to the buyer (or the buyer’s donee), the sale is “sourced” to location where the buyer (or donee) receives the merchandise, and the local sales tax applicable at the buyer’s (or donee’s) location applies and should be collected by the retailer. Note: The term “received” or “receipt,” for purposes of the sourcing rules, means: (a) taking possession of tangible personal property; or (b) making first use of services. The terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser.

(3) If neither (1) nor (2) apply, then the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller maintained in the ordinary course of the seller’s business.

(4) If neither (1), (2) nor (3) apply, then the sale is sourced to the address of the buyer obtained during consummation of the sale, and can include the address of the buyer’s payment instrument (check, credit card or money order).

(5) If (1), (2), (3) or (4) do not apply, or the retailer has insufficient information to determine whether (1), (2), (3) or (4) should apply, then by default, the “origin-based” sourcing rule applies. The sale is sourced to the address from which the merchandise (tangible personal property) was shipped, computer software delivered electronically was first available for transmission by the seller, or from which the taxable service was provided.

Examples:

A Hays resident purchases a camera from a store in Salina and takes possession of the camera at the store. The retailer should collect the local sales tax applicable to the Salina store location.

A rural Lincoln County resident purchases a couch from a furniture store in Salina and requests that the furniture store deliver the couch to the buyer’s address. The retailer should collect the local sales tax applicable to the buyer’s address in rural Lincoln County.

Gifts

When the product is not received by the purchaser at the seller’s location, if the purchaser has given the seller instructions to ship or deliver the product to a donee of the purchaser, then the sale is sourced to the donee’s address furnished by the purchaser.

Example:

A Russell resident purchases a computer from a Wichita business as a gift for a student attending college in Hays, and requests that the business ship the computer to the student’s address in Hays. The student is the purchaser’s “donee,” so the local sales tax applicable at the donee’s address, Hays, applies.

Receipt by Shipping Company on Behalf of Purchaser

Receipt by a shipping company on behalf of a purchaser is not considered “received” for purposes of the sourcing rules.

Example:

A law firm in Hutchinson orders office supplies from an office supply company in Overland Park and requests that the office supply company deliver the order to Jones Shipping Company, which the law firm has requested to ship the order to the law firm’s Hutchinson address. In this situation, receipt by Jones Shipping Company is not considered “receipt” by the purchaser, for purposes of applying the sourcing rules. Since rules (1) and (2) do not apply, in that the buyer did not receive the order at the seller’s location and the seller did not ship or deliver the order to the buyer, rule (3) applies: the sale should be sourced to the address of the buyer shown on the seller’s business records. If the seller’s business records do not contain an address for the buyer, then rule (4) would apply, and the seller should source the sale to the address of the buyer shown on the buyer’s payment instrument. If there is no address on the payment instrument for the buyer, then rule (5) would apply, and the sale would be sourced to the seller’s location.

Out-Of-State Sales

If the retailers sells merchandise that is to be shipped or delivered to the purchaser out-of-state, then the sales is considered to occur out-of-state, and no Kansas retailers’ sales tax is due. The out-of-state purchaser may owe compensating use tax in the state where the purchaser is located.

Example:

A South Dakota resident places a telephone order for office supplies from an office supply business in Lawrence, Kansas requesting that the order be shipped to South Dakota. This is considered out-of-state sales and Kansas retailers’ sales tax is not due. The South Dakota purchaser may owe compensating use tax to the state of South Dakota.

Sourcing of Services

Effective July 1, 2003, the “destination-based” sourcing rules apply to all retail sales of taxable services, as well as sales of tangible personal property. This means that the sale of a taxable service is sourced to the location where the purchaser of the services makes first use of those services. In many situations, this is the location where the taxable services are performed.

Examples:

A rural Jefferson County resident brings his car to a mechanic in Topeka for repairs. The car repairs are performed at the mechanic’s shop in Topeka, and the consumer picks the car up at the shop location. The mechanic should collect state sales tax and the local sales tax in effect at Topeka on the repair charges. If the mechanic had performed the repairs at the consumer’s residence, then the mechanic should collect state sales tax and the local sales tax in effect at the consumer’s rural Jefferson County address.

The air conditioning system goes out in a law office and a repairman is called to fix the system. The repair charges are sourced to the law office location where the repairs are performed.

Change to Sourcing Rules for Construction/Contractor Work

Before July 1, 2003, retail sales involving the furnishing of services taxable under subsections (p), (q) and (r) of K.S.A. 79-3603 (installing, repairing, servicing, altering or maintaining tangible personal property not being held for sale in the regular course of business; service or maintenance contracts on such property) pursuant to a contract were sourced to the location where the services were performed only if the contract price exceeded \$10,000 per contract. See K.S.A. 2002 Supp. 12-191. If the contract price were \$10,000 or less, the sale of taxable services was sourced to the contractor’s place of business. Under the new sourcing rules that take effect on July 1, 2003, such services are sourced under the “destination based” rules, that is, the location where the services are received by the purchaser, i.e., the location where the purchaser makes first use of the services. This often will be the same location as where services are performed.

Examples:

A building contractor enters into a remodeling contract with the owner for a commercial building located in Olathe, Kansas for a contract price of \$100,000. The remodeling contract labor services are sourced to the commercial building location where those services are performed, and received by the buyer. The local sales tax in effect at the Olathe building address applies.

A Lawrence roofing contractor enters into a roof repair contract for \$5,000 with the owner of a commercial building located in Topeka, Kansas. The repair services are sourced to the commercial building address where the services are performed, and received by the buyer. The local sales tax in effect at the purchaser’s Topeka building address applies.

Exceptions to General “Destination-Based” Sourcing Rules

Certain items are excepted out of the “destination-based” sourcing rules. These are: sales of watercraft, manufactured homes or mobile homes, and the sale of motor vehicles, trailers, semitrailers or aircraft that do not qualify as “transportation equipment” (defined below). These sales remain sourced to the retailer’s business location under the previously existing “origin-based” sourcing rule. For sales or leases and rentals of qualifying transportation equipment, the general “destination-based” sourcing rule applies.

Example:

A consumer residing in Junction City purchases a motor vehicle from a dealer in Manhattan. Because motor vehicle sales (other than “transportation equipment” defined below) are excepted from the new “destination-based” sourcing rules, the old sourcing rules applicable to motor vehicle sales prior to July 1, 2003 will continue in effect. The dealer will collect the state and local sales tax applicable to the dealer’s location in Manhattan. Note: When the consumer registers the vehicle with the County Treasurer, the consumer will owe to the County Treasurer as local use tax the difference between the Manhattan local sales tax rate and the Junction City local sales tax rate on the purchase price.

• Transportation Equipment

In general, “transportation equipment” includes railroad locomotives and railcars, trucks, buses and aircraft utilized for carriage of persons or property in interstate commerce. “Transportation equipment” is specifically defined, for purposes of the sourcing rules, to include any of the following:

- (1) locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;
- (2) trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are: (a) registered through the International Registration Plan; and (b) operated under authority of a carrier authorized and certified by the U.S. Department of Transportation or another federal authority to

engage in the carriage of persons or property in interstate commerce;
(3) aircraft operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce;
(4) containers designed for use on and component parts attached or secured on any of the above items of transportation equipment.

The general “destination-based” sourcing rules apply to the retail sale, including the lease or rental, of qualifying transportation equipment.

Special sourcing rules exist for certain categories of sales.

• **Leases or Rentals of Tangible Personal Property (except for motor vehicles, trailers, semi-trailers or aircraft that do not qualify as transportation equipment)**

For leases or rentals of tangible personal property (other than motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as “transportation equipment”) in which periodic payments are made, the first lease payment is sourced under the general “destination-based” sourcing rules, as described above. The payments after the first payment are sourced to the primary property location. For leases with only one payment, the sale is sourced under the general “destination-based” rules.

Examples:

A consumer enters an equipment rental business and rents a lawn mower for a day, picking up the mower at the business and paying for the mower at that time. The rental is sourced to the business premises, and the local sales tax in effect at that location applies.

A consumer rents a tent for an outdoor party in the consumer’s back yard. The equipment rental business delivers the tent to the consumer. The rental is sourced to the consumer’s location, and the local sales tax in effect at that location applies.

A Cottonwood Falls resident enters into a one-year lease as lessee of computer equipment with rental payments due monthly. The lessor’s business location is in Hutchinson. The consumer picks up the computer equipment from the lessor’s business in Hutchinson. The computer equipment will be located at the consumer’s residence in Cottonwood Falls during the term of the lease. Because the lessee first took possession of the computer equipment at the lessor’s business premises, the first lease payment is sourced to that location, and the local sales tax in effect at Hutchinson will apply to that payment. However, subsequent lease payments will be sourced to the consumer’s location, and local sales tax in effect in Cottonwood Falls will apply to those lease payments. Had the lessor shipped the computer equipment to the consumer’s location, the first lease payment (as well as the subsequent lease payments) would have been sourced to the consumer’s location in Cottonwood Falls.

• **Leases of Motor Vehicles, Trailers, Semi-trailers, or Aircraft Not Qualifying as “Transportation Equipment”**

For leases or rentals of motor vehicles, trailers, semi-trailers, or aircraft not considered “transportation equipment”:
(a) when recurring periodic payments are involved, those payments are sourced to the primary property location, which is the address for the property provided by the lessee that is available to the lessor from the lessor’s business records. This should be the registered address for the vehicle. Intermittent use of the property at different locations will not alter the primary property location.

(b) when recurring periodic payments are not involved, the lease or rental payment is sourced in accordance with general “destination-based” sourcing rules.

Examples:

An Emporia resident, the lessee, leases a new car from a car dealer located in Wichita, the lessor, for a term of 3 years, with monthly lease payments due. The lease payments are sourced to the “primary property location,” which is the address that the lessee furnishes to the lessor as the location of the vehicle. This should be same as the location where the vehicle is registered, the consumer’s Emporia address. The local sales tax in effect at the “primary property location” of the leased vehicle, Emporia, applies to each of the lease payments. The lessor should collect and remit the state and local sales tax in effect at Emporia on the lease payments. During the term of the lease, if the lessee of the vehicle moves to another location and registers the vehicle at that new location, the lease payments due after the move will be sourced to the new location, for purposes of calculating the applicable local sales taxes on the lease payments.

A Council Grove resident rents a trailer from a rental business in Manhattan and takes possession of the trailer at the rental business location in Manhattan. The rental period is 45 days, for a lump sum rental payment of \$250. The rental business should collect state sales tax at the 5.3% rate (6.3% state rate effective July 1, 2010) and local sales tax at the rate in effect for the Manhattan address of the business on the rental proceeds of \$250. If the rental business delivered the trailer to the consumer’s Council Grove address, the rental business should collect the state sales tax, and the local sales tax in effect at Council Grove, instead of the local sales tax in effect in Manhattan.

• Direct Mail Sourcing Rules

Note: The “direct mail” sourcing rules were revised as a result of amendments to K.S.A. 2009 Supp. 79-3672 by Section 16 of 2010 Senate Bill 430, which are now effective. The explanation below reflects those amendments.

“Direct mail” is defined as:

printed material delivered or distributed by United States mail or other delivery services to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. Direct mail includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. Direct mail does not include multiple items of printed material delivered to a single address.

K.S.A. 2009 Supp. 79-3602(j).

There are two types of “direct mail”: “advertising and promotional direct mail” and “other direct mail.” “Advertising and promotional direct mail” is defined as printed material that meets the definition of “direct mail” the primary purpose of which is to attract public attention to a product, person, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. These would include, for example, such things as catalogs, or advertising or political campaign fund-raising flyers or brochures. “Other direct mail” is “direct mail” that is not “advertising and promotional direct mail” and includes, but is not limited to, transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account and payroll advices; any legally required mailings, including, but not limited to, privacy notices, tax reports and stockholder reports; and other non-promotional direct mail delivered to existing or former shareholders, customers, employees or agents including, but not limited to, newsletters and informational pieces. “Other direct mail” does not include the development of billing information or the provision of any data processing service that is more than incidental. K.S.A. 2009 Supp. 79-3672, as amended by Section 16 of 2010 Senate Bill 430.

Advertising and Promotional Direct Mail

If the purchaser of the “advertising and promotional direct mail” (such as a retailer sending out an advertising brochure to customers and contracting with a printer to produce and mail those brochures) provides the seller of the direct mail (the printer and mailer of the brochure) a direct pay permit or a direct mail sourcing certificate (Form ST-31, available in Publication KS-1520, downloadable from the Department’s website at www.ksrevenue.org), then the purchaser has the obligation to self-accrue, report and remit the applicable sales tax on the transaction, sourcing the sale to the jurisdictions to which the “advertising and promotional mail” is delivered, and the seller of the direct mail is relieved of that obligation of collecting and reporting sales tax on the transaction. If the purchaser of “advertising and promotional direct mail” provides the seller information showing the jurisdictions to which the direct mail is delivered to recipients, then the seller is obligated to collect and remit sales tax on the transaction, sourcing it to the appropriate jurisdictions of the recipients of the “advertising and promotional direct mail.” If the purchaser does not provide to the seller a direct pay permit, direct mail sourcing certificate, or taxing jurisdiction information on the recipients, then as the “default” sourcing rule, the seller sources the sale to the address from which the items are shipped, which is most likely the seller’s location. K.S.A. 2009 Supp. 79-3672, as amended by Section 16 of 2010 Senate Bill 430.

Example:

A business located in Hays, Kansas purchases “advertising and promotional direct mail” consisting of advertising flyers from a printer located in Hutchinson, Kansas. The flyers are to be mailed from Hutchinson to the business’s customers located at various addresses in Kansas and surrounding states. The business provides the mailing addresses of its customers and taxing jurisdiction information for those addresses to the printer. The printer should bill the purchasing business for local sales taxes (in addition to the state sales tax) applicable to the mailing, based on the addresses to which the flyers were mailed. If 500 flyers were mailed to Great Bend, the local sales tax would be due on the price of those 500 flyers at the rate in effect at Great Bend. If 200 more flyers were mailed to Larned, the local sales tax would be due on the price of those 200 flyers at the rate in effect at Larned.

Same situation as above, except the purchasing business gives the printer a direct mail sourcing certificate (Form ST-31), indicating that the purchaser will assume the obligation to pay and remit the applicable tax on a direct pay basis. Having received a direct mail sourcing certificate from the purchaser, the printer is then relieved of the obligation to collect and remit sales tax on the direct mailing. The purchaser is then obligated to remit directly the state and local sales tax applicable to the mailing, based on the addresses to which the mailing was delivered.

Same situation as above, except the purchasing business fails to provide to the printer a direct mail sourcing certificate, the information showing the taxing jurisdictions to which the direct mail is delivered, or a direct pay permit. In that situation, the printer must bill the purchaser for state and local sales tax at the rate applicable to the location from which the flyers were shipped, Hutchinson, Kansas.

Other Direct Mail

“Other direct mail” includes mass-mail business correspondence, such as monthly account statements, invoices and privacy statements. Similar to the sourcing rule for “advertising and promotional direct mail,” if the purchaser of the “other direct mail” (such as a business contracting with a printer to have monthly billing statements sent out to its customers) provides the seller of the direct mail (such as the printer and mailer of the monthly billing statements) a direct pay permit or a direct mail sourcing certificate (Form ST-31), then the purchaser has the obligation to self-accrue, report and remit the applicable sales tax on the transaction, and the seller of the direct mail is relieved of that obligation of collecting and reporting sales tax on the transaction. If the purchaser of “other direct mail” provides the seller information showing the jurisdictions to which the direct mail is delivered to recipients, then the seller is obligated to collect and remit sales tax on the transaction, sourcing it to the appropriate jurisdictions of the recipients of the “other direct mail.” However, a different “default” sourcing rule applies for “other direct mail.” When the purchaser of “other direct mail” does not provide the seller a direct pay permit, direct mail sourcing certificate, or taxing jurisdiction information, the seller sources “other direct mail” to the purchaser’s billing address, instead of the seller’s location (as is the case with “advertising and promotional direct mail”). K.S.A. 2009 Supp. 79-3672, as amended by Section 16 of 2010 Senate Bill 430.

Example:

A utility provider retains a data processing firm to maintain the accounts of its utility customers. Data processing services are not taxable in Kansas. That information would be used to produce the monthly billing statements for those customers. Although those monthly billing statements are considered “other direct mail” and Kansas does tax charges for “direct mail,” the charges for the data processing services to produce the information contained in those billing statements is not considered “direct mail” and are not taxable. The charges for printing the monthly billing statements would be taxable as the sale of “other direct mail.” If the utility provider (the purchaser of “other direct mail”) did not provide the printer (the seller of “other direct mail”) a direct pay permit, direct mail sourcing certificate, or information showing the jurisdictions to which the monthly billing statements are to be sent, then the printer would source the sale of “other direct mail” to the billing address for the utility provider. The “default” sourcing rule for “other direct mail” (source to the billing address of the direct mail purchaser) thus differs from the “default” sourcing for “advertising and promotional direct mail” (source to the location from which the seller ships the direct mail).

Delivery Charges for Direct Mail

“Delivery charges” are defined as follows:

charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating and packing.

K.S.A. 2009 Supp. 79-3602(i).

Because delivery charges are included in the definition of “sales price,” delivery charges are subject to sales tax when the sale of the item being delivered is also taxable. However, delivery charges for direct mail are not taxable if they are separately stated on the invoice (or other billing document) to the purchaser. If delivery charges for direct mail are not separately stated on such documentation, then they are taxable. K.S.A. 2009 Supp. 79-3602(i).

The exclusion for “delivery charges” for “direct mail” applies only to sales of personal property and services that meet the definition of “direct mail.” In addition, the exclusion includes separately stated delivery charges for:

- 1) retail sales that include both the printing and delivery of “direct mail,” including sales characterized as the sale of a service when that sale results in printed material that meets the definition of “direct mail;”
- 2) retail sales of services for only mailing or delivering of “direct mail” not printed or sold by the delivery or mailing service provider, and
- 3) retail sales of services for the development of billing information or data processing services that results in printed materials delivered or mailed to a mass audience where the costs of the printed materials are not directly billed to the recipients.

Direct Mail Delivery Charges Examples

Example 1—Advertising and Promotional Direct Mail

Manhattan clothing store contracts with a Topeka printing company to print and mail out sale advertisement flyers to the clothing store’s customers with 1/2 of the flyers mailed to Manhattan customer addresses, and 1/2 to Topeka customer addresses.

The flyers are “advertising and promotional direct mail.”

The clothing store does not give the Topeka printing company a direct pay permit, direct mail form, or information showing the jurisdictions to which the direct mail is delivered to recipients. Topeka printing company prints and mails the flyers, then bills the clothing store \$100 for the printing costs and \$25.00 for mailing costs (note: separately stated mailing costs are not subject to sales tax per K.S.A. 79-3602(i)).

The printing costs are subject to sales tax. Because the purchaser, the clothing store, did not provide the seller with a direct pay permit, direct mail form, or information showing the jurisdictions to which the direct is delivered to recipients, the “default” sourcing rule applies, and the sales tax on the printing costs is sourced to Topeka, the location of the seller, the printing company, so the state and local sales tax rate in effect for Topeka applies. The mailing costs for the direct mail are not taxable if they are separately stated by the seller to the purchaser on the billing document.

Example 2—Other Direct Mail

Topeka bank contracts with a Wichita printing company to print and mail out to its customers a bank “privacy policy” notice, with 1/3 of the notices going to customers in Topeka, 1/3 to Lawrence, and 1/3 to Emporia.

The “privacy policy” notices are “other direct mail.”

The Topeka bank does not give the Wichita printing company a direct pay permit, direct mail form, or information showing the jurisdictions to which the direct mail is delivered to recipients. The Wichita printing company prints and mails the notices, then bills the bank \$200 for the printing costs and \$40.00 for mailing costs.

The separately stated mailing costs are not taxable, but printing costs are subject to sales tax, and the sales tax is sourced under the “default” rule for “other direct mail” to the billing address of the Topeka bank, the purchaser, so the Topeka sales tax rate will apply to the printing costs.

• Telecommunications Sourcing Rules

Telecommunications service has its own sourcing rules. Telecommunications sourcing is the same as under current Kansas law. This means that telecommunications sales are generally sourced to the customer’s billing address. These rules are consistent with the federal Mobile Telecommunications Sourcing Act, adopted in Kansas.

Taxpayer Assistance. Additional copies of this Notice, and other department forms or publications, may be download from our website, www.ksrevenue.org. If you have questions about this rate increase and how it applies, please contact:

Taxpayer Assistance Center *Phone:* 785-368-8222
Kansas Department of Revenue *Hearing Impaired TTY:* 785-296-6461
915 SW Harrison St., 1st Floor *Fax:* 785-291-3614
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