

## **APPLICATION OF KANSAS SALES TAX TO THE SALE OF PROPANE\***

### **I. Sales of Propane – General Rule:**

The retail sale of tangible personal property (propane) within the state of Kansas is subject to Kansas Retailers' Sales Tax.

A "retail sale" is a sale to the end user / consumer of the propane. Sales to other retailers are "wholesale" sales and are not subject to Kansas Sales Tax. When selling to other retailers – the seller needs to obtain a Kansas Resale Exemption Certificate from its customer and retain it for at least three (3) years. See *Publication KS-1520*, p. 43.

A sale that is delivered to a customer outside of Kansas is not subject to Kansas sales tax. The delivery can be made by the seller or someone that the seller directs to make the delivery. The seller will want to retain a shipping document or invoice with a "ship to" address outside of Kansas in their records for at least three (3) years. When an out-of-state customer picks up the propane in Kansas it is subject to Kansas sales tax unless, the customer commissions someone who holds themselves out to the public as a hauler/shipper (a common carrier) to pick up the propane in Kansas and deliver it to a point outside of Kansas for them. Taking possession of propane in Kansas by an out-of-state customer, or their employees, friends, relatives or personal agent is taxable. The person taking possession of the propane on direction of the customer must be a bona fide shipper of goods, and the delivery must be made to a point outside of Kansas – in order for the sale to be exempt.

### **II. Sales outside of Kansas.**

As stated above, sale of propane delivered to a point outside of Kansas is not subject to Kansas retailers' sales tax. However, a compensating use tax may be due to the state in which the propane was delivered. All states that impose a sales tax also impose a compensating use tax. A compensating use tax is generally due when an item of tangible personal property is purchased in one state and used, stored or consumed in another state.

Kansas propane marketers selling and making deliveries into another state are typically responsible for collecting and remitting compensating use tax to that other state. Federal law requires sellers to collect the other state's compensating use tax when the seller has a "nexus" – a substantial physical presence - in the state to which they are selling. A seller typically has a nexus with the other state when they: 1) Own or rent real estate in the other state, or 2) have employees or agents in the other state, or 3) make deliveries with their own vehicles into that other state.

Kansas propane marketers selling and making deliveries into another state with their own trucks or in trucks driven by their employees or agents typically have a nexus with the state in which they are making deliveries and must collect that state's compensating use tax. For example, a Kansas propane marketer routinely makes delivery with the company truck into Nebraska. As a general rule, Nebraska has legal authority to require the Kansas propane dealer to collect report and remit the Nebraska compensating use tax. Furthermore, the state of Nebraska would have legal authority to audit the Kansas propane dealer and assess tax, penalty and interest on all sales of propane (or any other item of tangible personal property) sold into Nebraska. Thus, Kansas propane marketers / dealers making sales into another state should contact that other state regarding their compensating use tax responsibilities to that state.

Deliveries made into another state by an entity that holds itself out to others as a hauler/shipper to the general public would not create a nexus. For example, if a Kansas propane dealer was to hire a common carrier to haul propane for him into another state, this alone would not create a nexus with the other state.

### **III. Kansas Exemptions – some of the more common exemptions:**

1. Residential – In Kansas, sales of propane gas to a residence for use in heating or lighting is exempt from STATE sales tax but, is subject to LOCAL – city, county and any special district sales taxes, (K.S.A. 12-189a(b)). A residence is a single family home, duplex, town house, mobile home/manufactured home or apartment. No exemption certificate is required. This would include sales of propane to an investor for use in a residential rental currently vacant. A residence, for sales tax purposes, does not include RVs, campers, travel trailers, etc., even if the travel trailers, campers, RVs, etc. are used as temporary residences. Thus, the full (combined) rate of sales tax (state, city, county and/or special taxing district) is due on propane that is used to heat travel trailers, campers, RVs, etc. being used as temporary residences. Propane for barbecue grills and smokers is subject to sales tax at the full rate.

Businesses that are carried on within a residence should be taxed on a percentage basis – the percentage of the home used as a business would be subject to sales tax on the total bill – both state and local tax. The percentage used as a residence – local tax only. An exemption certificate (ST-28B) is required. See *Publication KS-1520*.

For profit nursing homes and dormitories are also taxed on a percentage basis – that percentage that is used for offices, and common areas, such as hallways, kitchens, dining rooms, etc. are subject to sales tax on the total bill – both state and local tax. That percentage that is used for bedrooms and bathrooms are subject to local tax only. An exemption certificate (ST-28B) is required. See *Publication KS-1520*. Note: Some Nonprofit nursing homes and dormitories may qualify for a complete sales tax exemption as an “Exempt Entity”. For example, if a dorm is owned by a school – the exemption will be a complete (100%) exemption. See Exempt Entity below.

- B. Agricultural - Propane used for agricultural production purposes is exempted from both state and local sales taxes. There are at least two (2) different laws that may exempt the purchase of propane used in an agricultural environment. They are the “Consumed in Production” exemption and the exemption at K.S.A.79-3606(w) which exempts “all sales of propane gas” for agricultural use.
  1. The “Consumed in Production” exemption (K.S.A. 79-3606(n)). An exemption certificate is required when claiming this exemption. Exempt “consumed in production” agricultural uses of propane include, but are not limited to:
    1. Dairy barns & brooder or farrow houses – This exemption is limited to heating buildings used exclusively for birthing. Heating buildings that house livestock, fowl, etc. after birthing does not qualify for the exemption.
    2. fire starters
    3. Heating nurseries – a nursery is a facility where plants are grown from seed (produced)
    4. powering irrigation equipment
    5. powering tractors, combines and other farm implements
    6. weed control
    7. grain drying
  2. Propane used for Agricultural Purposes. No exemption certificate is needed for this exemption. While the consumed in production exemption does not exempt all uses of propane used in agricultural production, the K.S.A.79-3606(w) exemption for propane used for an agriculture purpose would. For example, propane used for the heating of all buildings used for agricultural purposes would be exempt – specifically, the heating of buildings that house livestock, fowl, etc. WOULD qualify under the Propane used for Agricultural Purposes exemption found at K.S.A. 79-3606(w). This exemption would exempt all purchases of propane used for agricultural purposes by farmers, ranchers and

nurseries. The agriculture production exemption does not include purchases by businesses that are not directly engaged in agricultural production:

Commercial operations such as processing food or dairy products, off-farm storage and marketing, lumbering, or use by a stockyard, slaughter house, floral shop or turf farm.

- C. Consumed in Production – Propane which is “consumed in production” is exempt from both state and local sales tax. An exemption certificate is required. See *Publication KS-1520*.

A classic example of propane which is “consumed in production” is the use of propane to power some kind of manufacturing process, such as propane used to fire an oven that bakes bricks. Any propane used to heat a commercial building is taxable – both state and local tax. However, that percentage of the propane that is used to fire the oven – that which is immediately consumed in producing a product – is exempt from sales tax – both state and local.

Exempt uses of propane which may be exempt as “consumed in production” include, but are not limited to:

1. Propane used to heat ovens and grills in a restaurant (does not extend to heating the restaurant).
2. Propane used to heat SLEEPING ROOMS in a hotel (does not extend to common areas, meetings rooms, dining rooms, heating the pool, offices, etc.).
3. Propane to power a fork lift when used to transport, convey, handle or store the property undergoing manufacturing or processing at any point from the beginning of the production line through any warehousing or distribution operation of the final product that occurs at the plant or facility.
4. Propane used to power motors to pump crude or natural gas out of the ground (does not extend to storage or heating crude for ease of transportation or the powering of pumps just to transport the crude or gas).
5. Propane used in the actual production of a product – such as in the making of bricks as illustrated above.
6. Propane used to dry grain on the farm or at elevators, co-ops, etc.

- D. Exempt Entity – many customers are exempt from sales taxes on their purchases because of which they are – governmental entities, churches, schools, etc., coupled with the requirement that the purchase be used exclusively for their governmental or religious purposes. An exemption certificate is required. See *Publication KS-1520*.

For example, when a city operates a business – such as a golf course open to the public – the sale of propane, tanks, parts, etc., are subject to sales tax at the full rate. Sale of propane, tanks and parts to a city to heat its building used for carrying out its governmental responsibilities would be exempt. Another example would be propane, tanks, parts, etc. provided to a parsonage, rectory, convent, minister’s house, or similar residence that is used to house religious leaders. These are not exempt as purchases that are used exclusively for religious purposes. Same holds true for rental houses owned by churches. See NOTICE 99-14. Local sales tax would be due on the propane for these residents and the full rate of sales tax (state, city and/or county) for the tanks and parts. Sales of propane to heat the church would be completely exempt.

- E. Trenching – Fees which are separately stated on invoices to customers for trenching / excavating are not subject to Kansas retailers’ sales tax.
- F. Testing & Inspections – Fees which are separately stated on invoices to customers for any type of testing or inspection are not subject to Kansas retailers’ sales tax.
- G. Finance Charges & Late Fees – Not subject to sales tax if separately stated on the invoice.

- H. Sale of Insurance or “Downward Price Protection” on the sale of propane – Insurance premiums are not subject to sales tax if separately stated on invoice involving the sale of propane.
- I. Credit Card Fees – When a retailer adds a fee to the customer’s bill to recoup the charges for the customer using a credit card to pay his bill. The credit card fee is taxable if sale of propane, tank or parts is subject to sales tax.

#### **IV. Other Taxable Transactions:**

- C. Sales/Rental of Tanks – The retail sale, RENTAL or LEASE of tangible personal property (propane tanks and applicable equipment) within the state of Kansas is subject to Kansas Retailers’ Sales Tax (as a general rule). Thus, the sale, rental or lease of a propane tank to a residence, for agricultural use or to a commercial customer is subject to sales tax. The rate of sales tax on the sale, rental or lease of tanks and parts would be the full rate of sales tax. Only the sale of the propane itself would get local tax treatment for residential or agricultural uses. Those customers claiming the “consumed in production” exemption would not be exempt on the purchase, rental or lease of the tank – as the tank is not “consumed” (immediately used up). Exempt Entities (in general) could purchase, rent or lease tax exempt – however, the seller should take a Tax-Exempt Entity exemption certificate. (See Publication KS-1520, Kansas Exemption Certificates).
- D. Set-up fees – Fees charged to set up propane tanks are, as a general rule, subject to sales tax. Exceptions to this general rule are that set-up fees are not subject to sales tax at a residence. Nor are set up fees subject to sales tax if the set-up is in connection with the original construction of a building for facility. No sales tax on set up fees if the purchaser is an Exempt Entity. Thus, set-up fees are only subject to sales tax when the customer is a commercial customer and the set-up is not done in connection with the original construction of a building or facility. In these “commercial/remodel” situations, the rate of sales tax due is the rate in effect where the work is performed. Tax is due on all parts or materials.
- E. Service work – Follow the same rules as stated above in “set-up fees”. No sales tax on labor to repair tangible personal property (tanks and all attached equipment) at a residence or on “original construction” of a building or faculty. Tax is due on all parts or materials.
- F. Delivery – Sales tax is due on delivery charges if the item being sold, rented or leased is subject to Kansas sales tax. The rate of tax due is the same rate as applied to the sale of propane. For example, sales of propane for residential use are subject only to local sales tax (city and/or county). Delivery charges for the sale, rental or lease of tanks and/or parts is the full rate of sales tax (state, city and/or county combined rate).
- G. Destination Sourcing – **SALES:** Charge the rate of Sales Tax in effect where the customer takes delivery on the sale of the tangible personal property (propane, tanks, and parts).

**RENTALS/LEASES:** The rate of sales tax due on the rental or lease of tangible personal property is dependent on whether the customer makes periodic payments or not.

The rule is that if the customer DOES NOT makes recurring periodic payments involving the rental or lease of tangible personal property – such as a propane tank – the rate of sales tax due is the rate in effect where the customer takes delivery.

When the customer MAKES recurring periodic payments involving the rental or lease of tangible personal property – such as a propane tank – the rate of sales tax due on the first payment is the rate of sales tax in effect where the customer takes delivery of the property (tank). All other payments are at the rate in effect at the primary location of the property (where the tank is located at). From a practical standpoint these two rules may mean the same rate of tax is collected.

## V. Gross Receipts

In general, sales tax is imposed on the “gross receipts” received on a sale, lease or rental by the retailer. In other words, sales tax is to be calculated on the total amount of money or consideration received from the customer. When the item being sold is subject to sales tax all other fees (with noted exceptions – see below) are subject to sales tax, including:

- Delivery charges – at the same rate as the item being sold – propane for residential heating and lighting – local sales tax only. Tanks and parts – full/combined rate.
- Administrative Fees
- Hazmat fees

As noted above, there are exceptions to this general rule when the following items are separately stated on the customer's invoice (no sales tax on):

- Trenching – Excavating
- Testing – Inspections
- Finance Charges & Late Fees
- Insurance

\* This guide does not apply to the sale of propane delivered through lines, mains or pipes to customers – as different rules apply when the propane is delivered to customers through the use of lines, mains or pipes. See K.S.A. 79-3603(c) and K.S.A 12-189a. This guide sets out the rules for sales of propane delivered to customers via trucks or for sales where the customer takes delivery at the seller's place of business.

HANDY CHART:

Propane Use	State	Local	Tax Situs*
Ag Use	Exempt	Exempt	N/A
Commercial Use	Taxable	Taxable	Where the Customer Takes Delivery
Consumed in Production	Exempt	Exempt	N/A
Residential Use	Exempt	Taxable	Where the Customer Takes Delivery
Recreational Vehicles or BBQ Grills	Taxable	Taxable	Where the Customer Takes Delivery