
Notice 09-06
(Revised April 20, 2010)

Sales Tax Base on Motor-fuel Purchases
Includes Federal Excise Taxes

K.S.A. 2009 Supp. 79-3606(a) provides:

The following shall be exempt from the *[sales]* tax imposed by this act:
(a) All sales of motor-vehicle fuel or other articles upon which a sales or excise tax has been paid, not subject to refund, under the laws of this state

This provision means that Kansas retailers' sales tax does not apply to the retail sale of motor fuel that is subject to the provisions of the Kansas motor-fuel tax act (Act), unless the motor fuel is not taxed under the Act because of an exemption in K.S.A. 2009 Supp. 79-3408(c) or the department is refunding the motor-fuel tax to the final consumer for off-road use or for another nontaxable use.

K.S.A. 2009 Supp. 79-3408(c) lists the motor fuels whose sale or delivery are subject to the requirements of the Act but that are not taxed under it. These listed fuels include aviation fuel and dyed-diesel fuel. The Act taxes the use, sale, or delivery of gasoline and clear-diesel fuel, but allows the motor-fuel tax to be refunded for off road or other exempt use. *K.S.A. 2009 Supp. 79-3453*. The different types of motor fuels and the tax per gallon are listed in K.S.A. 2009 Supp. 79-34,141.

When Kansas motor-fuel tax does not apply to fuel such as dyed-diesel fuel or aviation fuel, Kansas sales tax applies to its retail sale unless the purchaser/final consumer provides the retailer with a sales-tax exemption certificate. *See K.S.A. 2009 Supp. 79-3606(a)(Motor fuel is subject to sales tax unless the motor fuel excise tax has been paid.)* Sales tax exemption certificate forms are available for download from our web site: www.ksrevenue.org. The appropriate form should be completed by the consumer and given to the fuel retailer to claim the sales tax exemption. Examples of off-road use of dyed-diesel fuel and aviation fuel whose sale to a final consumer is exempt from Kansas sales tax are: (1) dyed-diesel consumed by farmers in their field work; (2) dyed-diesel consumed by rock crushing equipment in quarry operations; (3) aviation fuel consumed by scheduled airlines; and (4) dyed-diesel stored in a separate tank that powers an interstate motor carrier's refrigeration unit.

When a sale of motor fuel is subject to sales tax, the retailer is required to collect sales tax on the "sales or selling price" of the fuel. This amount includes any Federal fuel

excise tax that is imposed on the fuel, even when the fuel and the Federal tax are listed as separate line-item charges on the purchase invoice. *See K.S.A. 2009 Supp. 79-3602(II)(No deduction from the "sales or selling price" for "taxes imposed on the seller and any other expense of the seller.")*

After fuel is sold, some consumers may apply for a credit or refund of Federal fuel excise tax. IRS Publication 510 lists the Federal fuel excise tax credits and refunds that are available and explains how to apply for them. The fact that a Federal tax credit or refund may be or has been issued does not allow the credit or refund to be deducted from the "sales or selling price" used to calculate Kansas sales tax either at the time of sale or later, as part of an invalid sales tax refund claim filed with the department to recover the sales tax paid on the Federal tax credit or refund amount.

Consumers of fuel that is taxed under the Act, such as gasoline or clear diesel, may apply to the department for a motor-fuel tax refund for fuel used off road or for another nontaxable use. *See K.S.A. 79-3453 and K.S.A. 2009 Supp. 79-3454 for fuel uses subject to refund.* When a refund is sought, the consumer's initial purchase of the fuel was exempt from Kansas sales tax under K.S.A. 2009 Supp. 79-3606(a) since Kansas motor-fuel tax was paid on the fuel.

After the department issues a motor-fuel tax refund, the consumer is required to comply with Notice MF-50 and report Kansas retailers' sales tax on the fuel unless the consumer can claim a sales tax exemption for the fuel. Notice MF-50 can be download from our web site. It contains instructions for calculating and reporting Kansas sales tax on fuel that has generated a motor-fuel tax refund from the department.

Fuel that generates a refund of Kansas motor-fuel tax is subject to Kansas sales tax under the "not subject to refund" provision in K.S.A. 2009 Supp. 79-3606(a) if the fuel doesn't qualify for a sales tax exemption. One example of fuel that qualifies for a motor-fuel tax refund that is subject to sales tax is gasoline used for recreational boating on which Kansas motor-fuel tax has been refunded to the consumer by the department. *See www.ksrevenue.org: Your Business → Motor Fuel → Frequently Asked Questions.*

This revision is intended to clarify, rather than change, the requirements discussed in the version of Notice 09-06 that took effect on June 26, 2009. The earlier Notice is rescinded by this revision.

Taxpayer Assistance. Additional copies of this notice, and other forms or publications, are available for download from our web site, **www.ksrevenue.org**. If you have questions about motor fuel tax or sales tax, please contact:

Taxpayer Assistance Center
Kansas Department of Revenue
915 SW Harrison St., 1st Floor
Topeka, KS 66612-1588

Phone: 785-368-8222
Hearing Impaired TTY: 785-296-6461
Fax: 785-291-3614