**Opinion Letter**

|  |  |
| --- | --- |
| **Letter Number:** | **O-2009-014** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Vehicle repossession by a dealership that financed the sale.** |
| **Keywords:** |  |
| **Approval Date:** | **11/12/2009** |

**Body:**

Office of Policy & Research

November 12, 2009

XXXXX
XXXXX
XXXXX

RE: Your e-mail received November 10, 2009

Dear XXXXX:

Thank you for your recent e-mail. You ask if an accrual-basis dealership that finances the sale of a vehicle can claim a deduction for the sales tax that it paid to the department at the time of sale, if it later repossesses the vehicle because of a payment default. The answer is yes.

The type of repossession you are asking about is discussed in EDU-31a, *Sales Tax Guidelines: How Kansas Motor Vehicle Dealers Should Charge Sales Tax on Vehicle Sale.*

**Example 10 - Seller financed sales:**When a dealer that uses accrual-basis accounting agrees to make a credit, conditional, or installment sale of a vehicle by extending its own credit or to otherwise finance the sale under a non-assignable agreement that does not involve a financial institution, the dealer may either: (a) remit tax on the full selling price at the time of the sale; or (b) pay tax on the total amount accrued during each reporting period. *See K.A.R. 92-19-3.* When a dealer that uses cash-basis accounting agrees to make a credit, conditional, or installment sale of a vehicle using its own credit or to otherwise finance the sale under a non-assignable agreement that does not involve a financial institution, the dealer may pay tax on the total collections made during each reporting period.
If the buyer defaults on the loan, no refund shall be paid if a cash-basis dealer remitted the tax due on its actual collections from the buyer. Such a dealer may not deduct any expense incurred repossessing the vehicle, for vehicle damage, or for any other expense. If a buyer defaults on a loan made by an accrual-basis dealer, the dealer may seek a refund of any taxes accrued and remitted to the department but not actually collected from the buyer. As with cash-basis dealers, no deductions are allowed for dealer collection expenses.

Please note that if the sale is financed by another party, such as a bank or credit company, the dealership may not take a sales tax deduction if the vehicle is later repossessed. Similarly, no deduction or refund claim may be made by the bank or credit company for any part of the sales tax that the dealership paid to the department. When a vehicle sale is financed by a third-party lender, the dealership is paid by the lender and suffers no loss if the buyer defaults on the loan. This same rule applies when a vehicle is repossessed after a dealership that originally financed the sales transaction later sells its loan paper to another lender.

The dealership's repossession of a vehicle is not a retail sale and is not taxed when the title is returned to the dealership. When a repossessed vehicle is resold by the dealership, the sale is required to be reported as part of the dealership's gross receipts without regard to any sales tax that was paid by the previous buyer who defaulted on the loan. When a retailer uses a repossessed vehicle other than for retention, demonstration, or display while holding the vehicle for resale in the regular course of its business, the dealership is required to accrue sales tax on the use of the vehicle.

Please call me at 785-296-3081 if you have any additional questions.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 11/16/2009 Date Modified: 11/16/2009**