Notice

Notice Number: 03-10
Tax Type: Kansas Compensating Tax; Kansas Retailers' Sales Tax
Brief Description: Application of the New Sourcing Rules to Certain Businesses
Keywords:
Effective Date: 06/25/2010
Approval Date: 08/26/2003

NOTE: Underlying law may have changed. See Revenue Notice 19-04 concerning nexus.

Body:

KANSAS DEPARTMENT OF REVENUE

NOTICE 03-10
APPLICATION OF THE NEW SOURCING RULES
TO CERTAIN BUSINESSES
June 25, 2010 (Revised)

The 2003 Kansas legislature enacted new destination-based sourcing rules for retail sales of tangible personal property and services in Kansas. *See 2003 House Bill No. 2005.* The department issued Notices 03-01 through 03-05 to help implement the new rules. This notice supplements those notices and shall be construed as being consistent with them.

All of the notices are available at www.ksrevenue.org. These notices replace and supercede all other prior notices and rulings issued by the department that concern sourcing of sales and use tax.

What is "sourcing"? "Sourcing" means determining the tax situs of a transaction. Sourcing rules establish where the taxable incidence of retail sales or services takes place, and fix which local sales tax should be collected on a transaction. The change to destination-based sourcing does not affect the way in which state and local sales taxes apply to purchases of utility services and telephone services, since sourcing for these services has been destination-based since 1973.

I. FEES AND CHARGES FOR ADMISSIONS AND FOR PARTICIPATION IN SPORTS AND RECREATION; MEMBERSHIP DUES.

(a) *Summary of destination-based sourcing rules for fees and charges for admissions, for participation in sports and recreation; rules for dues paid for club membership.*
· Fees and charges for admissions, and for participation in sports and recreation, shall be sourced to the place where admission is gained or where the sporting event or other recreational activity is held. Receipts from dues shall be sourced to the location of the facility used by dues-paying members.
· Each event venue is responsible for collecting and remitting sales tax on charges to its events. Retailers who broker tickets for an event being held in another taxing jurisdiction shall collect the full amount shown on the face of the ticket, which includes the state and the local sales tax in place where the event is held, and forward it to the event venue that is responsible for reporting and remitting the tax to the state.

(b) *Fees and dues.* The change to destination based-sourcing should not affect the way in which state and local sales tax applies to fees and charges for admission and entertainment, participation in sports and recreation, and dues. Businesses that bill customers for these charges will continue to collect the state and local sales tax in place where admission is gained, the event takes place, or the facility is located that is used by dues-paying members.

(c) *Ticket sales.* Frequently, tickets are used to evidence the sale of admissions, which are taxable under *K.S.A. 2009*

Supp. 79-3603(e). The admission ticket or other billing receipt shall state the sum of the combined state and local sales tax, or shall contain a written statement indicating that the sales tax is included in the ticket price. The appropriate local sales taxes to charge are those in place at the venue where admission is gained. This rule applies whether the ticket is picked up at the event's box office, at another location, or is mailed or delivered electronically to the purchaser's address.

In general, sales tax compliance and administration are established by having each venue account for its ticket sales. The venue that ultimately receives payment for the ticket sales shall report and remit the tax to the department. Generally, sales tax shall be remitted when the venue receives payment for the ticket, rather than when the event is held. For purposes of this section, "venue" shall include the venue itself or any entity that contracts to use the venue and charges consumers for admission or for participation in sports or other recreational activities that are being held there.

Retailers in other local sales tax jurisdictions who broker tickets or otherwise sell tickets on behalf of the venue shall collect the full amount shown on the face of the ticket, which includes state and the local sales tax in place where the event is held. This amount shall be forwarded to the venue that ultimately receives payment for the tickets, and that is responsible for reporting and remitting the tax to the state. Remote ticket sellers should not double tax the admission charge by collecting tax in addition to the tax shown on the face of the ticket or included in the ticket price.

This approach should be used when tickets to events held in Kansas are sold outside the state. This approach may be presumed to apply when tickets are sold in Kansas for an event held in another state.

Because agreements entered into by event sponsors, ticket brokers, facility owners, and performers can vary greatly, the department may approve other ticket sales arrangements as long as all state and local sales taxes that are due are collected from the ticket buyer and remitted to the state in a timely manner. Sponsors, ticket brokers, facility owners, and performers who wish to use a different ticket-sales arrangement than the ones set forth here shall obtain prior written approval from the department before making ticket sales under such an arrangement.

(d) *Season ticket sales.* Season tickets typically allow the ticket holder to attend all home games or other events held by the ticket seller. Sales tax for these tickets shall be sourced to the venue where the home games or other events are held. When season ticket sales include admissions to different venues in different taxing jurisdictions, the season ticket seller shall apportion their receipts and remit sales accordingly. If the season ticket seller forwards part of the receipts to a venue in another Kansas taxing jurisdiction or in another state, that venue shall be responsible for remitting the appropriate local sales tax in Kansas or, if in another state, the appropriate sales tax for that state.

(e) *Taxation of admission charges.* Admission charges that are subject to state and local sales tax include charges for:
· admission to places of amusement, entertainment, or recreation;
· admission to athletic events, lectures, plays, concerts, and other forms of entertainment sponsored by public or private elementary or secondary schools or by public or private educational institutions in Kansas;
· admission to any state, county, district, or local fair in Kansas;
· admission to private parks, campgrounds, and other recreation areas;
· admission gained by tickets that are bartered or given by a promoter or another party for services or something else of value; and
· sightseeing rides or tours on buses, aircraft, boats, trains, or other forms of transportation. When a ride or tour is advertised or otherwise held out as being primarily for sightseeing or entertainment, the charge will be considered to be for a recreational activity rather than for transportation. *K.A.R. 92-19-22a(b).*

Admissions and charges that are not subject to state or local sales tax include:
· free admissions;
· charges for instructional seminars required to meet professional continuing education requirements;
· charges paid to nonprofit groups for admission to an event operated within the isolated or occasional sale limitations of Kansas law;
· charges for admission to any cultural and historical event that occurs once every three years;
· charges paid to nonprofit homeowners associations by members for use and maintenance of the association's recreational facilities, if membership is limited to a specified development, subdivision, or area and the facility is

operated for the benefit of the property owners or their tenants;
· charges for instruction lessons conducted at a facility, if the charges are exclusively for the instruction lessons and include the use of the facility only during the period of time that the lessons take place;
· charges for admission to federal, state, city, or county parks, campgrounds, and recreation areas; and
· charges for church camps and religious retreats that are being operated exclusively for religious purposes and are exempt under *K.S.A. 2009 Supp. 79-3606(aaa).*

(f) *Taxation of fees for participating in recreational activities:* State and local sales tax applies to fees and charges by public and private clubs, drinking establishments, organizations, and businesses for participating in sports, games, and other recreational activities. *K.S.A. 2009 Supp. 79-3603(m).* Charges for participation in sports, games, and other recreational activities are considered to be charges for the right or privilege to participate in them. Taxable receipts for participation in sports, games, and other recreational activities include all fees or charges, including entry fees and league fees. *K.A.R. 92-19-22b(b).*

Fees and charges for participation in sports, games, and other recreational activities that are not subject to sales tax include:
· charges by any political subdivision, green fees charged by municipal golf courses, entry fees, league fees, and other participant fees charged by park and recreation departments;
· charges by Boy Scouts, Girl Scouts, YMCA, and YWCA, and any other organization that is exempt from property taxation pursuant to K.S.A. 2009 Supp.79-201 *Ninth*, and amendments thereto;
· charges for participation in sports, games, and other recreational activities by any youth recreation organization that provides services exclusively to persons 18 years of age or younger, that is exempt from federal income taxation pursuant to IRC 501(c)(3);
· charges for participation in automobile races sponsored by a national racing association and other similar entry fees and charges to events sanctioned by a national sporting association to which spectators are charged a taxable admission. *K.S.A. 2009 Supp. 79-3603(m)(2); K.A.R. 92-19-22a*; and
· charges for instructional lessons in sports, arts, and crafts;

(g) *Taxation of dues.* Sales tax applies to gross receipts from dues charged by public and private clubs, drinking establishments, organizations, and businesses, payment of which entitles a member to the use of facilities for recreation or entertainment. *K.S.A 2009 Supp. 79-3603(n); K.A.R. 92-19-73.* Dues include charges for a member or prospective member to use the facilities of the club, organization or business. This includes periodic or one-time special assessments, initiation or entry fees. Dues do not include a refundable membership equity required to secure and maintain membership in a private club, if the club or organization is obligated to repay the refundable membership equity upon termination of the membership and the refundable membership equity is reflected as a liability on the club's or the organization's books and records. *K.A.R. 92-19-73(b).* Refundable membership equity is typically the amount of a new member's initiation fee that is required to be applied to paying off a resigning member for that member's stock, cash deposit, or other refundable payment as provided in the club's articles of incorporation or by-laws.

Dues that are not subject to state or local tax include:
· dues charged by either an organization of honorably discharged military veterans of the United States armed forces, or an auxiliary of such organization, that is exempt from property taxation pursuant to K.S.A. 2009 Supp. 79-201 *Eighth*;
· dues charged by a community service organization providing humanitarian services, including the Boy Scouts, Girl Scouts, YMCA, and YWCA, that is exempt from property taxation pursuant to K.S.A. 2009 Supp. 79-201 *Ninth*; and
· sales of memberships in a nonprofit organization, that is exempt from federal income taxation pursuant to IRC 501(c)(3), when the receipts are used to support the operation of a zoo.

II. FLORISTS.

(a) *Summary of destination-based sourcing rules for florists.*
· For sales other than wire-order sales, the sale shall be sourced to the florist's business location when a customer takes delivery there. When the florist makes delivery to another location in Kansas, the sale shall be sourced to that location. If delivery is made out-of-state, Kansas sales tax does not apply to the transaction. The delivery address

determines how the sale is sourced, without regard to where the credit-card billing address is or where the invoice is delivered to the customer.
· For wire-order sales, sales tax shall be sourced to the place of business of the florist who accepts payment for the order. The florist who, pursuant to a wire order, prepares and delivers the arrangement shall not collect any sales or use tax on the transaction. This is a uniform rule that has been applied to florist's wire-orders sales by all states that impose sales tax. The rule will be changed if and when the uniform, nationwide rule is changed.

(b) *Orders other than wire orders --- Kansas florists.* When a Kansas florist receives an order directly from a customer, the florist shall collect the state and local sales tax in place at the location where delivery is made in Kansas. This is a significant change from the earlier law for Kansas deliveries that required florists to collect the local sales tax in place at their place of business. As in the past, Kansas florists should not collect Kansas sales tax when delivery is made to an out-of-state address. The sales and use tax laws of the destination state will apply to the transaction. If a Kansas florist has sufficient physical presence in the destination state (such as employees who operate in the state, vehicles that make deliveries into that state, or a facility there, whether rented or owned), the florist may be obligated to collect the destination state's sales or use tax.

(c) *Transition rule for wire orders ---Kansas florists.* States first enacted sales tax laws during the depression of the 1930's. Over time, the states adopted a uniform method for taxing sales by florists who participate in a telegraphic delivery association. Under this scheme, states collect sales tax on the amount charged by a florist to its customer, even when the florist instructs another in-state or out-of-state florist to arrange and deliver the flowers to the customer. No tax applies to the florist who accepts the telegraphic order from another florist, and arranges and delivers the flowers. In the floral industry, these types of transactions are commonly referred to as "wire orders."

Administrative regulation K.A.R. 92-19-13a implements this uniform scheme for treatment of wire orders by Kansas florists. This regulation was adopted under the authority that has been granted in K.S.A. 79-3619 since at least 1939. This statute allows the department to fashion uniform rules for retailer groups in order to make tax collection more efficient. Because of the existing nationwide uniformity in this area, the rules set forth in K.A.R. 92-19-13a shall continue to apply to Kansas florists who send and accept wire orders, for the time being. This approach is expected to be a temporary one that will remain in place until a nationwide uniform rule is fashioned for wire orders that is consistent with destination-based sourcing. Kansas florists will be notified if and when the sourcing rule for wire orders is changed.

(d) *Out-of-state florists.* Out-of-state florists who accept wire orders for delivery in Kansas shall continue to account for Kansas sales and use tax on wire orders in the same way that they did before July 1, 2003. This means that when an out-of-state florist receives a wire order directing the florist to arrange and deliver flowers to a Kansas address, the out-of-state florist should not collect Kansas sales or use tax on the delivery.

III. DRY CLEANING AND LAUNDRY SERVICES.

(a) *Summary of destination-based sourcing rules for laundries and dry cleaners.*
· Laundries and dry cleaners located in Kansas are required to collect the state and local sales tax in place where delivery is made to the customer in Kansas.
· Laundries and dry cleaners located in Kansas should not collect Kansas tax when delivery is made to a customer in another state. However, Kansas dry cleaners and laundries that make deliveries in another state may be required to register and collect sales tax for the state where delivery is made.
· Laundries and dry cleaners located in another state that regularly pick up and deliver clothing and other articles in Kansas are required to register as Kansas retailers under the sales tax act and to collect Kansas state and local sales tax in place where delivery is made to customers in Kansas.

(b) *Kansas laundries and dry cleaners.* (1) *In-state deliveries.* Under the new destination-based sourcing rules, laundries and dry cleaning services ("dry cleaners") shall collect state and local sales taxes in place where the customer's clean clothing or other articles are picked up by or delivered to the customer. When a dry cleaner operates a separate pickup store, drop off store, or call station, the dry cleaner must collect the state and local sales taxes in place at the store or station when the articles are delivered to the customer there. When a dry cleaner contracts with a third-party to operate a separate store or station, the third-party shall collect state and local sales taxes in place at the

store or station when the articles are delivered to the customer there. When a dry cleaner operates a route, the place where delivery is made to the customer in Kansas shall be considered to be the place of sale of the services.

A dry cleaner may honor a resale exemption certificate when a hotel claims resale exemption for dry cleaning services for a guest. When this resale claim is honored, the location of the hotel shall be considered to be the place of sale and the hotel shall charge and collect the applicable tax when it bills its guest for the dry cleaning services.

(2) *Out-of-state deliveries by Kansas laundries and dry cleaners.* Under the new destination-based sourcing rules, Kansas dry cleaners shall not collect Kansas sales tax if the customer's property that has been dry cleaned or laundered in Kansas is delivered by the dry cleaner to a customer at an out-of-state location or to an out-of-state pickup store, drop off store, call station, or a similar site where the customer takes delivery. However, Kansas dry cleaners that make deliveries in another state may be required to register and collect sales tax for the state where delivery is made.

(c) *Out-of-state laundries and dry-cleaners.* Out-of-state dry cleaners, who make regular pick ups and deliveries to customers in Kansas, or who operate a pickup and drop off store in Kansas, are regularly engaged in the business of furnishing taxable services in Kansas. Because of this, such out-of-state businesses are required to register for and to collect state and local retailers' sales taxes on charges to Kansas customers for their services. Out-of-state dry cleaners are considered to be regularly engaged in business in Kansas whether they operate or contract with a third-party to operate a drop-off or pick-up site in Kansas or whether they regularly pick up and deliver to Kansas residents using their own vehicles or contract with a third-party to make the pick ups and delivers. When an out-of-state dry cleaner contracts with a third-party to operate a separate store or station in Kansas, the third-party shall collect state and local sales taxes based on the location of the separate store or station where the customer takes delivery.

IV. LINEN AND UNIFORM SERVICES.

(a) *Summary of destination-based sourcing rules for linen and uniform services.*
· Linen and uniform services located in Kansas are required to collect the local sales tax in place where delivery is made to the customer in Kansas.
· Linen and uniform services located in Kansas should not collect Kansas tax when delivery is made to an out-of-state customer. However, Kansas linen and uniform services who pick up and deliver in another state may be required to register and collect sales tax for the state where the deliveries are made.
· Linen and uniform services located in another state that make regular delivers of linens and uniforms to customers in Kansas shall register as Kansas retailers under the sales tax act and shall collect Kansas state and local sales tax on deliveries made here. Out-of-state linen and uniform services shall collect state and local sales tax based on where delivery is made to the customer in Kansas.

(b) *Kansas linen and uniform services.* For purposes of the new destination-based sourcing rules, linen and uniform supply businesses shall collect state and local sales tax based on where the linen, uniforms, or other property are delivered to the customer. Linen and uniform supply businesses include, but are not limited to, businesses that supply clean linen, towels, uniforms, gowns, protective apparel, clean room apparel, mats, rugs, and similar articles to consumers. It shall not matter whether the linen or uniform supply business does its own cleaning or contracts with other businesses to do the cleaning, or whether the business or its customer holds title to the property being cleaned. The Kansas state and local sales taxes in place at the delivery location applies when linens and uniforms are delivered in Kansas. Kansas tax does not apply when linens, uniforms, or similar articles are delivered to out-of-state consumers.

(c) *Out-of-state linen and uniform services.* Out-of-state linen and uniform supply businesses that pick up and deliver linens and uniforms to customers in Kansas on a regular basis are engaged in the business of furnishing taxable services in Kansas. Because of this, these businesses are required to register for and to collect state and local retailers' sales taxes on all charges to Kansas customers for the service. Out-of-state linen and uniform supply businesses shall be considered to be regularly engaged in business in Kansas whether they pick up and deliver to Kansas customers using their own vehicles or contract with a third-party to pick up and deliver to the customers.

V. REPAIR SHOPS AND OTHER SIMILAR BUSINESSES.

This section explains how repair shops and other similar businesses should apply the new sourcing rules when they bill customers for repair services and retail sales of repair parts. This category of businesses include, but are not limited to: aircraft servicing and maintenance businesses, automobile dealers who operate repair shops or body shops, independent garages, electronic repair shops, glass replacement shops, jewelers, machine shops, muffler shops, radio and stereo shops, upholstery and furniture repair shops, seamstresses, shoe repair shop, tire retailers, and welding shops. The information in this section does not apply to contractors, subcontractors and repairmen who engage in real property construction, repair, or maintenance.

For purposes of this notice, "servicing" or "repairing" shall include all of the services that are taxed under *K.S.A 2009 Supp. 79-3603(p), K.S.A 2009 Supp. 79-3603(q), and K.S.A 2009 Supp. 79-3603(r).* Taxable services under these sections include "servicing," "repairing," "altering," "maintaining," "installing," and "applying" of tangible personal property, as well as service and maintenance agreements which require performance of the taxable services on tangible personal property.

I. Service providers who operate at a fixed location in Kansas.

(a) *Summary.*
· Kansas repair shops are required to collect the state and local sales tax in place where the repaired property is delivered to the customer in Kansas. Most often, customer delivery occurs either at the repair shop or at the customer's home or place of business. This rule applies when a shop picks up the property at the customer's location, repairs the property at their shop, and then returns the property to the customer at the customer's location.
· When the ship-to or deliver-to address of repaired property is outside Kansas, Kansas tax should not be collected on either repair services or parts when the service provider ships or delivers the property to an out-of-state address on the service provider's own vehicles, by common carrier, or by the United States Postal Service.
· These rules shall control even when a repair shop: (1) repairs the customer's property at another one of its repair facilities, in Kansas or outside the state; or (2) contracts with another business, in Kansas or outside-the-state, to do some or all of the actual repairs for the customer. When a repair shop contracts with another business to service or repair a customer's property, the repair shop is required to give the business a resale exemption certificate for services.
· Repair shops that service motor vehicles, trailers, *or* semi-trailers, must collect the state and local sales tax in place *where* delivery *of the repaired vehicle* is made to the customer.-
· Repair shops that service motor vehicles, trailers, and semi-trailers for common carriers with Interstate Operating Authority shall continue to collect sales tax on repair services and exempt sales tax on repair parts, as they have done in the past. Repair shops that service aircraft also will continue to exempt both repair parts and repair services, as they have done in the past.

(b)(1) *Basic rules for retail sales of services, other than services performed on motor vehicle, trailers, semi-trailers.* Some Kansas service providers perform all of their repair services at their repair shop or other repair facility. When such a business returns the repaired property to the customer at its shop or within the same Kansas taxing jurisdiction as the shop, the business shall collect the state and local sales tax that is in place at the repair shop's location. When a repair shop ships or delivers the repaired property to a customer in another Kansas taxing jurisdiction, the business shall collect the state and local sales tax in place where the delivery is made. Requiring state and local sales tax to be collected based on the ship-to or deliver-to address is the new destination-based souring requirement of Kansas law.

Many service providers commonly perform repairs exclusively at their shop. However, some businesses own service trucks that allow them to do service work anywhere. For example, a welding shop, electronics repair shop, or auto repair shop may own and operate one or more service trucks that contain all of the parts and equipment needed to do repair work. When these trucks are used, the location where the services are performed determines which local sales tax is due. When these trucks are used to perform services outside Kansas, no Kansas tax is due.

(2) *Interstate deliveries of repaired property.* Under the new destination-based sourcing rules, a Kansas service provider is not required to collect Kansas sales tax on services or repair parts when it ships or delivers property that has been repaired in Kansas to an out-of-state consumer. Shipment may be made on the service provider's own vehicles, by common carrier, or by the United States Postal Service. If the service provider regularly delivers into another state using its own vehicles, the service provider may be required to register and collect sales or use tax for

that state.

All in-state deliveries of repaired property and parts by a Kansas business shall remain fully taxable (unless exempted by a different section in the law), including when a customer enters Kansas from another state and takes delivery here. As with all in-state deliveries, the state and local sales tax to be charged and collected is determined by where delivery is made to the customer.

> EXAMPLE: A business that repairs oil drilling equipment is located in Dodge City, Kansas. A customer brings oil drilling equipment from an oil well located in Oklahoma to the repair shop in Dodge City, where the equipment is repaired. The customer picks up the repaired equipment at Dodge City and takes it back to Oklahoma. The business should collect the state and local sales tax in place at Dodge City on the repair transaction. If instead, the repair business delivers the repaired equipment to Oklahoma and installs it on the well, this would be considered an out-of-state transaction on which no Kansas sales tax would be due. Because delivery is made in Oklahoma, the Dodge City business may be obligated to collect the Oklahoma sales tax on the transaction.

(c) *Rules for repair services performed on motor vehicles, trailers, semi-trailers, and for repair parts.* Under the destination-based sourcing rules, a customer is deemed to receive taxable services at the location where the customer makes first use of those services. When a Kansas service provider repairs or services a motor vehicle, trailer, semi-trailer, sales tax on charges for labor services and parts shall be sourced to the repair shop where the services are performed when the customer takes delivery there.

The new sourcing rules require that, when a parts department ships parts and other items to a Kansas address, the parts department shall collect the state and local sales tax in place at the ship-to address. The new sourcing rules also change the local sales tax that is required to be collected when repair services are performed from a service vehicle. State and local sales tax on services and parts will now be collected based on where the services are performed from a service vehicle, such as at a customer's home, place of business, or some other location.

Repair shops that service common carriers with Interstate Operating Authority shall continue to charge sales tax on repair services, and not charge sales tax on repair parts, as they have done in the past. This assumes that the customer takes delivery, or is deemed to take delivery, at the Kansas repair shop.

(d) *Retailers who outsource repair services on tangible personal property to third-parties or who have services performed at one of their other facilities.* The new destination-based sourcing rules shall control the sourcing for servicing tangible personal property whenever a Kansas retailer accepts a customer's property in need of repair and later bills the customer for repair services and parts. The new rules shall apply even when: (1) the retailer outsources repair services to a third party in Kansas or outside-the-state; (2) the property is repaired at the retailer's wholly-owned but separate repair facility in Kansas or outside-the-state; or (3) after its repair, the property is shipped directly to the Kansas customer from a Kansas or out-of-state address. Retailers who outsource the repair of tangible personal property to third parties shall provide the third party with a resale exemption certificate for the repair services to be performed. The new sourcing rules also mean that Kansas sales tax is not collected when repaired property is shipped or delivered to an out-of-state address, whether by the retailer, common carrier, the United State postal service, or by the third-party service provider.

(e) *Claiming resale exemption for services to tangible personal property.* (1) *Retailers who may claim resale exemption on outsourced services.* Services purchased by a Kansas or out-of-state retailer who has contracted with a customer to repair the customer's property shall be considered to be purchases of services for resale to the customer when all of the following conditions are met:

> (A) The retailer who is outsourcing the repair services presents the service provider with a resale exemption certificate for the services that identifies the specific customer on whose behalf the retailer is purchasing the service;
> (B) the retailer who has outsourced the repair services separately identifies the services on the customer billing when the services are subsequently resold to the customer; and

(C) the retailer who has outsourced the repair services does not use the services in any way other than for resale to the owner of the property.

(2) *Resale exemption for out-of-state retailers who contract with Kansas service providers to repair a customer's property.* To claim a resale exemption from a Kansas service provider, an out-of-state retailer does not need to be registered with the department as a Kansas retailer unless the Kansas service provider ships or delivers the repaired property to a Kansas address or otherwise delivers the repaired property to an address in Kansas. When property that has been repaired in Kansas is shipped or delivered to a Kansas address, the Kansas service provider may honor an exemption certificate from only: (A) an out-of-state retailer who is registered to collect Kansas sales tax; or (B) the person or entity in Kansas who is purchasing the service. If the out-of-state retailer cannot provide the in-state service provider with a Kansas registration number, the in-state service provider shall charge the retailer sales tax in accordance with Notice 03-09.

(3) *Resale exemption for property held for resale.* Purchases of services performed to repair tangible personal property that a retailer holds in its resale inventory, which includes inventory held exclusively for rental, shall be considered to be purchases of services for resale. A retailer may present a resale exemption certificate for services to claim exemption when purchasing services and parts for property that is held in the retailer's resale inventory. This resale exemption shall extend to repairs of property that is held in resale inventory by a manufacturer, processor, or wholesaler, or that is undergoing manufacturing or processing, shall be considered to be purchases of services for resale. While many of these repairs are performed in-house, services to items undergoing manufacturing or in inventory occasionally are performed by third-party service providers.

(f) *No resale exemption for contractor services.* Construction services performed by general contractors and subcontractors may not be purchased exempt for resale under the Kansas sales tax laws, since construction services transform tangible personal property into buildings, structures, and other real property improvements. Property owners who pay contractors to improve their real property are not buying tangible personal property and the contractors and subcontractors doing the work are not selling tangible personal property. The special rules that govern taxable services performed by contractors and repairmen will be discussed in another notice.

II. Service providers located in another state who provide services to Kansans.

(a) *Summary for out-of-state service providers.*
· A service provider located in another state who enters Kansas and performs taxable repair services here is considered to be a "retailer doing business in this state" for purposes of Kansas retailers' sales tax. As such the out-of-state service provider must register as a Kansas retailer and collect and remit Kansas state and local sales tax on its charges for services performed here.
· When an out-of-state service provider, who is registered for Kansas sales tax purposes, performs services both in and outside Kansas in connection with a repair transaction, state and local sales tax shall be due on the total cost to the consumer for both the parts and services if the service provider performs any taxable services that are part of the transaction in Kansas, either before or after the property is serviced in the other state.
· Out-of-state service providers who do not enter Kansas to perform taxable services but who have nexus with Kansas must collect the state and local Kansas use tax on the parts but not the labor services charged to its Kansas customer. Unless charges for services and charges for parts are separately stated on the customer billing, the out-of-state service provider must collect state and local use tax on the entire customer billing.
· When an out-of-state retail service provider does not collect Kansas use tax on repair parts, the in-state consumer must pay Kansas state and local consumers' compensating tax directly to the Kansas department of revenue on parts charges, when separately stated, or on the entire amount, if the parts charges are not separately stated.

(b) *Repair services performed both in Kansas and outside the state.* When an out-of-state service provider, in connection with a service transaction, performs some portion of the taxable services in Kansas and the rest in another state, the entire customer billing shall be subject to Kansas state and local sales tax based on where the services are provided in Kansas. Customer billings on such service transactions shall not be bifurcated to only charge sales tax on in-state services. Kansas will allow a credit for sales tax that has been lawfully paid to another state on the same transaction.

EXAMPLE: An out-of-state service provider enters Kansas, performs services to removes property here, take it to their repair facility in another state, and then returns the repaired property to Kansas and reinstalls it here. Because the repaired property was removed, redelivered, and reinstalled in Kansas, the entire transaction shall be considered to be a Kansas taxable sale of repair and installation services and parts. If sales tax has been lawfully paid to another state on the same transaction, Kansas will allow a credit.

(c) *Retail repair services performed wholly outside Kansas by out-of-state service providers for Kansas consumers--repair parts taxable; repair services exempt.* Repair *services* performed wholly outside Kansas by an out-of-state repair facility for a Kansas resident are not subject to Kansas retailers' or consumers' compensating tax. However, *any repair and replacement parts* used in the repairs that are shipped or delivered into Kansas by the out-of-state repair facility for use in Kansas are subject to state and local Kansas retailers' or consumers' compensating tax in effect at the ship-to address. An out-of-state service provider who is registered to collect Kansas use tax, and who ships or delivers the repaired item to Kansas, shall collect retailers' use tax on the parts charges when separately stated, or on the entire charge for both services and parts when the parts charges are not separately stated. When an out-of-state retail service provider fails to collect Kansas use tax on repair parts, the in-state consumer must pay Kansas state and local consumers' compensating tax directly to the Kansas department of revenue on the parts charges when separately stated, or on the entire amount if the parts charges are not separately stated.

(d) *Property shipped by a consumer to an out-of-state retailer for repair, but repaired in Kansas.* Although it rarely happens, a consumer may ship or deliver property in need of repair to an out-of-state retailer, who then delivers the property to a repair facility in Kansas. In such a case, Kansas sales tax shall not apply as long as the property being repaired is returned to the out-of-state retailer or is shipped or delivered to another out-of-state address. Kansas sales tax shall be collected on both parts and services when a consumer picks-up the repaired property at the Kansas repair facility or when the property is drop shipped to a Kansas address by the Kansas repair facility. If the out-of-state retailer cannot provide the in-state service provider with a Kansas registration number, the in-state service provider shall charge the retailer sales tax in accordance with Notice 03-09. When an out-of-state retail service provider fails to collect Kansas use tax on repair parts, the in-state consumer shall accrue state and local consumers' compensating tax on parts charges, when separately stated, or on the entire amount if the parts charges are not separately stated.

VI. FUNERAL SERVICES.

(a) *Summary of destination-based sourcing rules for funeral services.*
· All charges made by funeral home for its funeral services and any related sales of tangible personal property shall be sourced to the location of the funeral home.

(b) *Funeral services.* K.A.R. 92-19-15, an administrative regulation, applies Kansas sales tax to funeral directors. The parts of the regulation that are relevant to destination-based sourcing provide:

> . . . When a funeral director charges separately for the sale of tangible personal property and for required services, the sales tax shall be collected only on an amount equal to the retail sales price of the tangible personal property if charges for tangible personal property are segregated from those for services rendered on the invoice furnished to the purchaser.
> Cash advanced by the funeral director for the purchase of a cemetery lot or grave, associated cemetery expenses, remuneration to the minister and choir, use of the church, and press notices shall not be subject to sales tax.
> Each funeral director shall collect and remit *[state and local sales tax]* on the full retail price of the sale of vaults, clothing, flowers and other special merchandise. Sales of hearses, furniture, instruments, and other equipment to a funeral director are taxable.
> Each funeral director shall not collect and remit sales tax on a charge for embalming services when the services are not a part of a regular funeral service. Sales to a funeral director of embalming fluid and other material used in an embalming service are taxable.
> When articles of personal property are ordered by the family from a merchant to be delivered to the funeral home, the merchant actually making the sale shall collect and remit the sales tax.
> When bodies are shipped or delivered from one funeral director to another within the state of Kansas, the funeral director furnishing the merchandise shall collect and remit the sales tax. . . . . *K.A.R. 92-19-15.*

(c) *Sourcing.* The purchaser's receipt and the first place of use of tangible personal property that is associated with funeral services typically occurs in the funeral home. Accordingly, a funeral home shall source all charges for its sales and services to the location of the funeral home. This means that funeral homes and directors should apply the same local sales tax to their charges that were applied in the past. This rule shall apply to caskets, vaults, chair rentals, tent rentals, and other charges for tangible personal property that are billed by a funeral home.

(d) The participants in the Streamlined Sales Tax Project are reviewing how funeral services should be treated under the project's destination-based sourcing rules. This means that, in the future, the department may issue a directive to change the sourcing requirements made here. If such a change is made, the department will notify the Kansas Funeral Directors and Embalmers Association of the new requirements and work with the association on a new directive that will be published on our website.

Contacting Taxpayer Assistance. To obtain additional copies of this or any other notice please call the Kansas Department of Revenue's voice mail forms request line at 1-785-296-4937 or download them from our web site: **www.ksrevenue.org**. Our Taxpayer Assistance Center can help you with questions about this notice. The number to use to call the Taxpayer Assistance Center from Topeka is 368-8222. For calls placed from outside Topeka, please use our toll free number: 1-877-526-7738. Our fax number is 1-785-291-3614.

Date Composed: **08/26/2003** **Date Modified:** **06/29/2007**

Return to KSA Listing