KANSAS
DEPARTMENT OF REVENUE

Mark Parkinson, Governor
Joan Wagnon, Secretary

www.ksrevenue.org

NOTICE 10-02

ONE PERCENT STATE SALES TAX RATE INCREASE ENACTED BY SENATE SUBSTITUTE FOR HOUSE BILL 2360

Revised June 22, 2010

New legislation increases the state sales and use tax rate from 5.3% to 6.3% on July 1, 2010. The new law does not change the scope of sales or use tax. Goods and services now subject to tax remain taxable, but at the higher state rate. Kansas retailers must charge and remit the 6.3% state tax on taxable sales of goods and services that occur on and after July 1, 2010.

When this Notice explains that a retailer should collect sales tax at the 5.3% or 6.3% state rate, it means the retailer is required to charge customers the combined sales tax rate that equals the sum of the 5.3% or 6.3% state rate *plus all applicable local sales tax rates.* When used in this Notice, "goods" means "tangible personal property" as defined at K.S.A. 2009 Supp. 79-3602(pp). The "July return" discussed here is the return for the July 2010 reporting period that is due on or before August 25, 2010.

Transition from the 5.3% to the 6.3% state rate - The following transition rules determine how sales tax applies to taxable sales transactions that begin before July 1, 2010, and are completed on or after July 1, 2010:

Sales Agreed to Before July 1, 2010, with Delivery On and After July 1, 2010 - When goods are sold and delivered before July 1, 2010, the 5.3% state rate applies. When goods are sold but delivery is arranged to be made or can reasonably be expected to be made on or after July 1, 2010, the 6.3% state rate applies. This rule applies to written sales contracts and verbal sales agreements even when full or partial payment is made before July 1, 2010.

Sales of Services - Kansas sales tax applies to charges for repair, installation, and application services, as well as to charges for "servicing" property. *K.S.A. 2009 Supp. 79-3603(p) & (q).* These labor services are sourced in the same way as the sale of goods. *K.S.A. 2009 Supp. 79-3669; K.S.A. 2009 Supp. 79-3670.* This means charges for labor services are taxed when the goods being serviced or repaired are returned to the customer or when the completed service work is otherwise available for "first use" by the customer. These rules apply without regard to when the service agreement is entered into, when payment is received, or when the labor services are performed.

When a mechanic, body shop, electronics shop, or other service provider accepts a customer's vehicle or other property for service or repair before July 1, 2010, and returns it on or after July 1st, all of the charges are subject to the 6.3% state rate. When a dry cleaner or laundry accepts a customer's clothing or other

property for cleaning before July 2010 and returns it on or after July 1st, all of the charges are subject to the 6.3% state rate.

Telephone, cable, community antennae, and other subscriber television and telecommunication services - These services are subject to sales tax at the 6.3% state sales tax rate beginning July 1, 2010. Many of the services are billed on a calendar-month billing cycle. The service provider should charge the 6.3% state rate beginning with the invoice for the July 2010 calendar-month billing period.
Customers not on a calendar-month billing cycle may be invoiced for a monthly billing period that begins before and ends after July 1, 2010. The invoice for the last monthly billing period that begins before July 1, 2010, is subject to the 5.3% state rate. The service provider is required to charge tax at the 6.3% state sales tax rate on the invoice for the first monthly billing period that begins on or after July 1, 2010.
While not required, a service provider may elect to charge the appropriate rate in place for dated line-item charges, such as charges for long-distance calls and pay-per-view television. Tax on the remainder of the bill should be charged as discussed in the preceding paragraph.

Metered utility charges for taxable nonresidential water, gas, and electricity service - Metered services are subject to the 6.3% state rate beginning on July 1, 2010. The state rate increase applies to invoices for metered services in the same way it applies to the services discussed in prior subsection.

Leases of tangible personal property - Kansas sales tax is imposed on leases of tangible personal property. Each lease installment is treated as a separate sale. A sales tax rate change applies to lease installments without regard to when the lease agreement is entered into or when payment is made.

An installment for a billing period that starts on or after July 1, 2010, is subject to the 6.3% state rate. The installment for the last billing period that starts before July 1, 2010, is taxed at the 5.3% state rate.

This subsection does not apply to financing leases. A financial lease is credit arrangement that finances the purchase of goods. Sales tax on the goods is payable up front at the time of sale on the full sales price rather than on the stream of payments made to pay down the loan balance.

Rentals - The 6.3% state rate applies when a customer takes possession of rental goods on or after July 1, 2010. When a customer takes possession of rental goods before July 1, 2010, the rental charge for the last weekly or monthly billing period that starts in June and ends on or after July 1, 2010, is subject to the 5.3% state rate. Once that billing period ends or if the rental agreement is extended, renewed, or modified on or after July 1, 2010, the 6.3% state rate applies from that time forward.

Admission Charges - An admission charge to an event held in Kansas is subject to the state rate in effect on the date the ticket is sold and delivered to the buyer, regardless of when the event is held.

Membership dues - Kansas sales tax is imposed on membership dues charged by country clubs and other organizations that allow a dues-paying member to use the organization's facilities for recreation or entertainment. Dues paid for periods that start on or after July 1, 2010, are taxed at the 6.3% state rate. Dues paid for a period that starts before and ends on or after July 1, 2010, are taxed at the 5.3% state rate.

Room Occupancy - Hotels should charge sales tax on single-day room charges for June 30th and the morning of July 1st at the lower 5.3% state rate. All taxable occupancy charges thereafter should taxed at the 6.3% state rate. For purposes of a rate change, room rentals billed on a weekly or monthly basis are treated as day-to-day rentals if either party has the unconditional right to terminate the room rental agreement.

Construction contracts - When repair, installation, or application services are performed as part of a construction project, the services are subject to Kansas sales tax unless the services are exempted as part of original or residential construction or under a Project Exemption Certificate. *K.S.A. 2009 Supp. 79-3603(p) and (q); Information Guides EDU-26 and KS-1525.* When construction labor services are not exempt, contractors and subcontractors are required to collect and remit sales tax on their charges to the property owner, the general contractor, or another subcontractor in accordance with the directives in Information Guide EDU-26 and KS-1525. *See Pages 26-34 of KS-1525 (Rev. 10/09).* Regardless of whether the labor services are taxed or exempted, contractors, subcontractors, and property owners are required to pay sales tax on their purchases of construction materials and supplies unless a Project Exemption Certificate has been issued for the project and is presented to the vendor at the time of purchase. *See Pages 12-16 of KS-1525 (Rev. 10/09).*

Progress payments. A progress payment is a payment made to a contractor as work progresses on a construction project. Progress-payment clauses in a construction contract allow the contractor to bill the property owner at intervals, which may be based on the costs incurred by the contractor, the percentage of work completed, the stage of work completed, a payment schedule, or some other basis. Progress payments help reimburse the contractor for the costs it incurs in each progress-payment interval, such as paying subcontractor charges and employee wages and buying building permits, construction materials, supplies, and insurance.

When a construction contract calls for billing progress payments to the property owner that include charges for taxable labor services, the contractor is required to report and remit sales tax on the taxable labor services performed during each interval covered by a progress payment. Sales tax on the labor services is required to be reported on the return for the reporting period in which

each progress payment is due and payable. The 5.3% state sale tax rate applies to taxable labor services rendered before July 1, 2010, in a progress-payment interval billing. The 6.3% state sale tax rate applies to taxable labor services rendered on or after July 1, 2010, that are included in a progress-payment interval.

After a project is complete and a contractor reconciles its earlier reporting of taxable labor services rendered both before and after July 1, 2010, under progress payments with its actual pay outs and receipts, the 6.3% rate applies unless the contractor can claim a reasonable allocation between the two rates that is clearly supported by its records and worksheets.

Construction projects where progress payments are not made. If a contractor does not bill a property owner for its construction services until the real property improvements are completed, the Kansas sales tax rate in effect on the date of completion applies without regard to when the construction contract is entered into or when payment is made. When work is started on a construction project on or after July 1, 2010, the 6.3% state rate applies to all charges regardless of when payment is made.

The only exceptions to these rules is when the department approves an application and the transition provision applies to a construction contract entered into before May 1, 2010. This transition provision is explained in the next subsection.

Construction contracts entered into before May 1, 2010 that qualify for the transition provision in the new law - The 2010 rate increase legislation contains a transition provision for certain binding written construction contracts that were entered into before May 1, 2010. It allows the 5.3% state rate that was in effect when the contract was signed to be charged on purchases of materials and taxable labor services for the construction project that are made or performed after the rate increase. By June 10, 2010, an electronic application form and instructions will be posted on the department's website: www.ksrevenue.org. To be able to purchase materials and taxable labor services for the project at the 5.3% state rate, the general contractor must complete and submit the electronic application and the required documentation to the department on or before July 10, 2010.

When an application is approved, the department will issue a numbered certificate, which the general contractor should copy and distribute to its subcontractors on the project. The general contractor and subcontractors should fill out a separate copy of the certificate for each vendor and subcontractor that invoices them for materials or taxable labor services for the project. The certificate will instruct the vendors and subcontractors to charge the 5.3% state rate on materials and labor services that are purchased for the qualifying project on or after July 1, 2010. Vendors, subcontractors, and the general contractor are required to maintain a copy of each certificate that they issue or honor as part of their sales tax records.

If a vendor or subcontractor refuses to charge the 5.3% state rate instead of the 6.3% state rate, the contractor or subcontractor should pay the 6.3% state tax being charged and use an ST-21 refund form to request a refund from the department for the amount of tax that is overcharged. Contractors and

subcontractors should not strike the sales tax that is charged at the 6.3% state rate and pay sales tax at the reduced 5.3% state rate. The remedy for contractors and subcontractor is to pay tax at the 6.3% state rate and seek a refund for the difference from the department.

Building Materials - State sales tax applies to building materials at the rate in place when the materials are delivered to the contractor, not when the purchase is agreed to or payment is made, unless the department has approved an application that allows the transition provision to apply to a construction contract entered into before May 1, 2010.

Use tax - A 6.3% state use tax, plus the applicable local use tax, is imposed on the use in Kansas of any taxable tangible personal property on which Kansas use tax has not been paid. Kansas use-tax law provides a credit for sales taxes paid to another state. For purposes of determining whether Kansas use tax is owed when another state's sales tax is being credited against the Kansas use tax owed, the 6.3% state rate should be applied if the first use of the property in Kansas occurs on or after July 1, 2010.

When an out-of-state retailer incorrectly charges the 5.3% state rate instead of the 6.3% state rate on property delivered to a Kansas business on or after July 1, 2010, the business should report the addition 1% state use tax on its consumers' use tax return. If no Kansas tax is collected by an out-of-state retailer, the Kansas business is required to report both state and local use tax on the purchase. The date a Kansas business accepts delivery determines whether the 5.3% or 6.3% state rate applies.

Reporting the tax - Most retailers will report the correct amount of state sales tax on their July return if they bill their customers in accordance with the directives in the section Transition from the 5.3% to the 6.3% state rate, and program the rate increase into their accounting software in a timely manner. These retailers can complete their July return that applies the 6.3% state rate in the same way they completed earlier returns.

Some retailers may report some receipts on their July return from customer payments for charges that were correctly invoiced at the 5.3% state rate. These include retailers that: (1) use cash basis accounting; (2) provide services on a month-to-month basis, such as utility providers, cable companies, and telecommunications providers; (3) charge taxable dues; and (4) lease or rent property. These retailers must adjust their July return to avoid overpaying sales tax. How this is done will be explained in Notice 10-03, *Instructions for Reporting Sales Tax Receipts on the Sales Tax Return Filed for July 2010*, which will be posted on the Department website prior to July 1, 2010.

This June 3, 2010 revision is intended to clarify, rather than change, the requirements discussed in the earlier version of Notice 10-02 that was sent to retailers with their June 2010 sales tax returns. The earlier Notice is rescinded by this revision.

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

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

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