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NOTICE 21-26

Sales Tax Exemption for Certain Motor Vehicles Sold to Nonresidents for Removal from Kansas Revision of Form ST-8B

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The Kansas Department of Revenue has revised form ST-8B, Dealer/Purchaser Declaration of Exemption for Certain Vehicles and Aircraft Sold to Nonresidents for Removal from Kansas. The statute is unchanged, but the Department has revised the form ST-8B to highlight and clarify the requirements that must be met to qualify for the exemption.

The Department became aware that some Kansas buyers or Kansas dealers are not aware of the qualification requirements that exist for a nonresident of Kansas to be exempt from sales tax on the purchase of a motor vehicle. K.S.A. 79-3606(k) provides an exemption from sales tax for the sale of:

> "any motor vehicle, semitrailer or pole trailer, as such terms are defined by K.S.A. 8-126, and amendments thereto, or aircraft sold and delivered in this state to a bona fide resident of another state, which motor vehicle, semitrailer, pole trailer or aircraft is not to be registered or based in this state and which vehicle, semitrailer, pole trailer or aircraft will not remain in this state more than 10 days;"

The revised format of form ST-8B emphasizes those requirements that must be met to qualify as a bona fide resident of another state. When a vehicle is purchased by a Kansas resident the intent to remove the vehicle from Kansas and/or to register the vehicle in another state does not relieve the purchaser from paying Kansas retailers' sales tax.

When only one party is involved in the transaction and that person is a bona fide resident of a state other than Kansas, (i.e., a nonresident of Kansas) no question of residency exists. All the documents involved in the transaction (financing, purchase agreement / purchase invoice, and vehicle title) indicate a sale to a bona fide resident of another state.

Questions of residency also do not arise in a situation where a Kansas resident is involved only in the vehicle sale financing for a vehicle purchased by a nonresident of Kansas. In these cases the Kansas resident does not appear on the purchase agreement / purchase invoice, or on the vehicle title; it is plain that a nonresident of Kansas purchased the vehicle. While a co-signor will definitely appear on the promissory note, if the co-signor is truly a co-signor on the promissory

note and not a co-owner of the property, there is no requirement for the co-signor to appear on the contract showing the sale to the new owner.

Questions of residency arise when both a nonresident of Kansas and a Kansas resident are shown on the purchase agreement / purchase invoice and/or the vehicle title. Under Kansas sales tax law, taxation is the rule and exemption the exception. In these cases, the Department presumes the requirements for exemption established under K.S.A. 79-3606(k) have not been met, and that sales tax is therefore due. If the dealership making the sale does not collect and remit the sales tax, the Department will issue a sales tax assessment to the purchaser(s).

One of the tools used to determine a nonresident of Kansas' qualification for exemption is form ST-8B. The Department revised the form to highlight exemption requirements and to ensure that the buyer signing is aware of the exemption requirements.

Whether a nonresident of Kansas is making a purchase on their own, or the nonresident of Kansas is making a purchase with a Kansas resident co-signor, it is important for the nonresident of Kansas to properly complete the form ST-8B. First, the nonresident of Kansas must properly complete the form to qualify for exemption from sales tax. Second, the dealership must ascertain the identity of the person or entity presenting this certificate and, after exercising due diligence to determine its accuracy (i.e., making a good faith effort to confirm the facts and details of the situation), must accept the certificate in good faith. Failure to do either may cause a tax assessment against the nonresident of Kansas and/or the dealership.

If a dealership sells a vehicle to both a nonresident of Kansas and a Kansas resident (i.e., both the nonresident of Kansas and the Kansas resident are on the purchase agreement / purchase invoice and/or on the vehicle title), and does not collect and remit the sales tax, the Department will issue an assessment to the purchaser(s), and the notice of assessment will advise the purchaser(s) of their right to appeal. During the appeal (the informal conference) the purchaser(s) will have the opportunity to explain why they believe the transaction should qualify for exemption, and to provide any authority, documents, proofs, or other information they want the Department to consider. At the same time the Department will request information regarding the residency of all parties involved in the transaction, and all other requirements for exemption.

In summary, when both a nonresident of Kansas and a Kansas resident are involved in the purchase of a vehicle from a Kansas dealership, it is important for them to determine the role of each party. If the Kansas resident will truly be acting only as a co-signor, the transaction will not be subject to sales tax, but the Kansas resident will assume a financial obligation for the purchase of a vehicle they will not own. On the other hand, if the Kansas resident is on the purchase agreement / purchase invoice and/or the vehicle title, they then will have full rights to the vehicle (and at least some protection for any financial obligation) but the transaction will be subject to Kansas sales tax.

When the Department determines a transaction does not qualify for exemption and issues an assessment against a purchaser, that purchaser may appeal the assessment. Anyone in this situation is encouraged to exercise their right of appeal and proceed through the administrative process.

During the administrative process they will be given an opportunity to explain why they believe the transaction should qualify for exemption.

TAXPAYER ASSISTANCE

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