

NOTICE 21-17

REMOTE SELLERS (NOVEMBER 1, 2021)

Application of Notice

This Notice supersedes and replaces Notice 19-04 Sales Tax Requirements for Retailers Doing Business in Kansas. Additional information regarding “click-through” nexus provisions for affiliated persons related to sales and use tax collections can be found in Notice 21-23 Click-Through Nexus Eliminated.

Generally

During the 2021 Legislative Session Senate Bill 50 was passed and signed into law. Section 14 of the Bill amends K.S.A. 79-3702 to expand the definition of “retailer doing business in this state” and establish a de minimis threshold of \$100,000 in gross sales to customers in Kansas for non-Kansas retailers.

K.S.A. 79-3702 is the definitional section of the Kansas compensating use tax act. Senate Bill 50 amends the definition of “retailer doing business in this state” found in subsection (h)(1) to create, in new subparagraph (h)(1)(G), a category of retailer that, for purposes of this Notice and for purposes of administration, is being referred to as a “remote seller”. The amended language of the statute provides:

(h)(1) “Retailer doing business in this state” or any like term, means: (A) Any retailer maintaining in this state, permanently, temporarily, directly or indirectly through a subsidiary, agent or representative, an office, distribution house, sales house, warehouse or other place of business;

(B) any retailer utilizing an employee, independent contractor, agent, representative, salesperson, canvasser, solicitor or other person operating in this state either permanently or temporarily, for the purpose of selling, delivering, installing, assembling, servicing, repairing, soliciting sales or the taking of orders for tangible personal property;

(C) any retailer, including a contractor, repair person or other service provider, who enters this state to perform services that are enumerated in K.S.A. 79-3603, and amendments thereto, and who is required to secure a retailer’s sales tax registration certificate before performing those services;

(D) any retailer deriving rental receipts from a lease of tangible personal property situated in this state;

(E) any person regularly maintaining a stock of tangible personal property in this state for sale in the normal course of business; ~~and~~

(F) any retailer who has any other contact with this state that would allow this state to require the retailer to collect and remit tax under the provisions of the constitution and laws of the United States; *and*

(G) (i) for any retailer that does not satisfy any of the requirements contained in subparagraphs (A) through (F), such retailer shall be a retailer doing business in this state, if:

(a) For the period beginning on January 1, 2021, through June 30, 2021, the retailer had in excess of \$100,000 of cumulative gross receipts from sales by the retailer to customers in this state; or

(b) during the current or immediately preceding calendar year, the retailer had in excess of \$100,000 of cumulative gross receipts from sales by the retailer to customers in this state.

(ii) (a) For any retailer who satisfies the provisions of subparagraph (G)(i), such retailer shall not be required to collect and remit any taxes from sales occurring prior to July 1, 2021.

(b) For any retailer who satisfies the provisions of subparagraph (G)(i)(b) for sales in the current calendar year for the first time, such retailer shall be required to collect and remit the tax on any sales in excess of \$100,000 of cumulative gross receipts from sales in the current calendar year by the retailer to customers in this state.

De Minimis Threshold Measurements

Starting Date

The legislation requires the collection and remittance of sales and compensating use tax by “remote sellers” beginning July 1, 2021. All calculations required under this new provision of K.S.A. 79-3702(h)(1)(G) start from this date and apply to all “remote sellers”.

De Minimis Threshold

Based on the statutory language of K.S.A. 79-3702(G)(i), an out of state retailer is a “remote seller” if they have cumulative gross receipts from sales to customers in Kansas in excess of \$100,000 during the current or preceding calendar year. In this context, cumulative gross receipts includes all sales made by the “remote seller” to customers in Kansas, regardless of whether the item being sold is subject to, or exempt from, tax.

Because these provisions are effective July 1, 2021, only sales made during calendar year 2021 can be considered for tax year 2021 in determining the amount of cumulative gross receipts for registration purposes. There is no look-back to calendar year 2020, which would be the immediately preceding calendar year, because this look-back is prohibited by the fact the legislation was not effective until July 1, 2021. However, all sales made during 2021 must be

considered in determining when the threshold amount is reached, in accordance with K.S.A. 79-3702(G)(i)(a) which looks back to the period January 1, 2021, through June 30, 2021.

The statutory language of K.S.A. 79-3702(G)(ii)(a) provides a “remote seller” is not required to collect and remit any tax from sales made to Kansas customers prior to July 1, 2021. The language of K.S.A. 79-3702 (G)(ii)(b) provides a “remote seller” is not required to collect and remit tax on the first \$100,000 of sales made by the “remote seller” to customers in Kansas during the year the “remote seller” is first required to collect and remit tax. This does not mean these sales are exempt from tax, only that a “remote seller” is not required to collect the tax. A “remote seller” may collect tax on the first \$100,000 of sales per calendar year (on those transaction which are not exempt from tax) for the benefit of their customers. And a “remote seller” who does not collect should advise purchasers that they, the purchaser, are responsible for paying any tax due directly to the state of Kansas.

Calendar Year Sales Below De Minimis Threshold

A “remote seller” that does not meet the \$100,000 de minimis threshold is not required to register, collect, and remit Kansas tax. However, for the benefit of their Kansas customers, they may voluntarily do so. A “remote seller” who chooses not to voluntarily collect the tax should consider advising purchasers that they, the purchaser, are responsible for paying tax directly to the state of Kansas.

Calendar Year Sales Above De Minimis Threshold - Initial Year

The statutory language of K.S.A. 79-3702(h)(1)(G)(i) provides a “remote seller” whose calendar year sales sourced into Kansas are in excess of \$100,000 is not required to collect and remit tax on the first \$100,000 of sales made to customers in Kansas during the first year the “remote seller” is required to collect and remit tax. This does not mean these sales are exempt from tax, only that the “remote seller” is not required to collect the tax.

Though not required to collect tax due to the first year de minimis requirement, for the benefit of their Kansas customers a “remote seller” may voluntarily collect tax on the first \$100,000 of sales during this first year. A “remote seller” who chooses not to voluntarily collect the tax should consider advising purchasers that they, the purchasers, are responsible for paying tax directly to the state of Kansas.

Calendar Year Sales Above De Minimis Threshold - Subsequent Year(s)

Once a “remote seller” has made sales to Kansas customers equal to or in excess of the \$100,000 threshold they must collect and remit sales tax on any additional sales to Kansas customers. The “remote seller” must collect and remit sales tax on all sales made to Kansas customers in the following year. By way of example, if a “remote seller” has sales to Kansas customers in excess of \$100,000 in Year One, they must collect and remit sales tax on all sales to Kansas customers in excess of the threshold in Year One, and on all sales made to Kansas customers during Year Two, regardless of the amount of those sales.

Calendar Year Sales Fall Below De Minimis Threshold - Subsequent Year(s)

The requirement that a “remote seller” collect and remit Kansas tax ends if the amount of sales to Kansas customers falls below \$100,000 in the preceding year. To continue the example, if a “remote seller” has sales to Kansas customers in excess of \$100,000 in Year Three, the “remote seller” must collect and remit sales tax on all sales to Kansas customers during Year Four. But, if all sales made to Kansas customers during Year Four total less than \$100,000, there is no requirement to collect and remit tax for sales made in Year Five, or any subsequent year, until sales made in a given year exceed \$100,000. If that occurs, collecting and remitting tax would be required for all sales to Kansas customers in excess of \$100,000 during that year, and for all sales to Kansas customers during the following year.

Registration

A “remote seller” is required to begin collecting and remitting tax on sales in excess of the \$100,000 threshold as soon as they cross the threshold. In other words, a “remote seller” is required to register, collect, and remit tax on the next transaction after meeting or exceeding the threshold.

Because each “remote seller” will meet or exceed the threshold at a different time, each “remote seller” will establish their own date for when registration, collection, and remittance requirements begin. It is important to note that, regardless of when registration and remittance of tax actually occur, responsibility for collecting tax begins with the next transaction after meeting or exceeding the threshold. By way of example, if a “remote seller’s” first transaction is \$105,000, responsibility for collecting tax does not begin until the next transaction, regardless of the amount of that transaction. If a “remote seller” has multiple transactions within a calendar year that total \$99,950 and then has a \$100 transaction, responsibility for collecting tax does not begin until after the \$100 transaction. And if a “remote seller” has multiple transactions within a calendar year that total \$99,950 and then has a \$100,000 transaction, responsibility for collecting tax still does not begin until after the \$100,000 transaction.

A “remote seller” should register with the Department for retailers’ compensating use tax not later than thirty (30) days after their sales for the calendar year exceed \$100,000. At the time of registration each “remote seller’s” reporting and remittance schedule will be determined, based on the total amount of tax collected. More information regarding the registration process and filing frequency is available in our Publication KS-1510 Kansas Sales & Compensating Use Tax, which is available through the Department’s website at: www.ksrevenue.

As an alternative to registering directly with the Department, “remote sellers” may register through the Streamlined Sales Tax Registration System. Additional information is available through their website at: <https://www.streamlinedsalestax.org/for-businesses/sales-tax-registration-sstrs>.

In addition to the new provisions related to “remote sellers”, Sections 1 through 4 of Senate Bill 50 address marketplace facilitator platforms and requires the collection and remittance of

certain taxes by marketplace facilitators. Section 14 of Senate Bill 50 also amends K.S.A. 79-3702 to repeal the “click-through” nexus provisions for affiliated persons related to sales and use tax collections. For additional information in this regard, see Notice 21-14 Marketplace Facilitators, Products and Notice 21-23 Click-Through Nexus Eliminated, both of which are available through the Department’s website at: www.ksrevenue.org.

Maintaining Registration Made Under Notice 19-04 Guidance

On August 1, 2019, the Kansas Department of Revenue issued Notice 19-04, Sales Tax Requirements for Retailers Doing Business in Kansas, which provided guidance to remote sellers doing business in Kansas. The guidance required remote sellers that were not already registered with the Kansas Department of Revenue to register and begin collecting and remitting Kansas sales and/or use tax by October 1, 2019. As a result, many remote sellers registered and began collecting tax on sales made into Kansas.

With the passage of 2021 Senate Bill No. 50, a de minimis threshold was established for remote sellers. Because of the threshold, some remote sellers that registered and have been collecting tax may no longer be required to collect tax on sales made into Kansas.

If you are a frequent seller into Kansas, you are encouraged to remain registered to collect and remit Kansas tax. Remote sales tax calculation, remittance and tax filing services may be available to you, at no cost, through a Streamlined Sales Tax Certified Service Provider (CSP.) For more information about Streamlined Sales Tax and to see if you qualify, see: www.streamlinedsalestax.org/certified-service-providers/freeservices.

If you are a remote seller who had previously registered with the Department who does not now meet the de minimis threshold you may choose to cancel your registration. To cancel your registration, you should complete and submit form CR-108, Notice of Tax Account Closure (available at the Departments website: <https://www.ksrevenue.org/pdf/cr108.pdf>) to the Department at kdor_tac@ks.gov. However, it is important to note that while you may not be required to register and collect the tax, the tax is still due and must be remitted to the state of Kansas. If you do not collect and remit the tax it will now be the responsibility of the consumer to do so.

TAXPAYER ASSISTANCE

Additional copies of this notice, forms or publications are available from our web site, www.ksrevenue.org. If you have questions about this Notice, please contact:

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