# 2012 Kansas Statutes

**79-3651. Presumptions relating to exemption certificates; form of certificates; payment requirements; duties of presenters of exemption certificates; requirements when issued based on status of entity; penalties.** (a) For the purpose of the proper administration of the Kansas retailers' sales tax act and to prevent evasion of the tax imposed thereunder, it shall be presumed that all gross receipts from the sale of tangible personal property or enumerated services are subject to tax until the contrary is established. The burden of proving that a sale is not subject to tax is upon the seller unless the seller takes from the purchaser an exemption certificate to the effect that the property or service purchased is not subject to tax.

(b) An exemption certificate shall relieve the seller from collecting and remitting tax if the seller has obtained the required identifying information as determined by the director, from the purchaser and the reason for claiming the exemption at the time of purchase and has maintained proper records of exempt transactions pursuant to subsection (a) of K.S.A. 79-3609, and amendments thereto and provided them to the director when requested, except that no such relief from liability shall apply to a seller who: Fraudulently fails to collect the tax; solicits purchasers to participate in the unlawful claim of an exemption; accepts an exemption certificate claiming an entity based exemption when the subject of the transaction is actually received by the purchaser at a location operated by the seller and the director provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred. The purchaser improperly claiming an exemption shall remain liable for the nonpayment of tax.

(c) The exemption certificate shall be substantially in such form as the director may prescribe. The seller shall use the standard form for claiming an exemption electronically as adopted by the director. A seller may require a purchaser to provide a copy of the purchaser's sales tax registration certificate with a resale certificate as a condition for honoring the purchaser's resale exemption claim, except that in the case of drop shipment sales into this state, the third party vendor may claim a resale exemption based on an exemption certificate provided by its customer, re-seller, or any other information acceptable to the secretary available to the third party vendor evidencing qualification for a resale exemption, regardless of whether the customer, re-seller, is registered to collect and remit sales and use tax in this state. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used. A seller is relieved of liability for the tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. Such blanket certificate need not be renewed or updated by the seller for exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this subsection, a recurring business relationship exists when a period of no more than 12 months elapses between sales transactions.

(d) To lawfully present a resale exemption certificate the purchaser must be engaged in the business of selling property or services of the same kind that is purchased, hold a registration certificate, except as otherwise permitted in subsection (c) for drop shipment sales into this state, and at the time of purchase, either intend to resell the property in the regular course of business or be unable to ascertain whether the property will be resold or used for some other purpose. A resale exemption certificate may be used for resale of services to tangible personal property and not for services to real property.

(e) Any person who issues a resale certificate or other exemption certificate in order to unlawfully avoid payment of tax for business or personal gain shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or by both. In addition, if the director determines that a person issued a resale certificate in order to unlawfully avoid payment of tax for business or personal gain, the director shall increase any penalty that is due from the person under K.S.A. 79-3615, and amendments thereto, by $250 or 10 times the tax due, whichever is greater, on each transaction where the misuse of a resale certificate occurred.

(f) Exemption certificates issued by an entity claiming a specific exemption under K.S.A. 79-3606, and amendments thereto, based on the status of the entity shall bear the name, address of the entity and identification number issued to the entity pursuant to K.S.A. 2012 Supp. 79-3692, and amendments thereto. Such certificate shall be signed by an authorized person of the nonprofit entity, if in paper form, and contain the tax identification number of the entity. The certificate shall be substantially in such form as the director may prescribe. A seller may require that payments be made on an exempt entity's check, warrant, voucher or charged to the entity's account as a condition for honoring the entity's exemption claim.

(g) It shall be the duty of every person who purchases tangible personal property or services that are taxable under this act to pay the full amount of tax that is lawfully due to the retailer making the sale. Any person who willfully and intentionally refuses to pay such tax to the retailer shall be guilty of a misdemeanor and upon conviction shall be punished and fined as provided by subsection (g) of K.S.A. 79-3615, and amendments thereto.

**History:** L. 1997, ch. 126, § 19; L. 2003, ch. 147, § 11; L. 2004, ch. 173, § 16; L. 2005, ch. 91, § 1; L. 2007, ch. 155, § 9; L. 2010, ch. 123, § 14; Apr. 29.