

NOTICE 19-04

SALES TAX REQUIREMENTS FOR RETAILERS DOING BUSINESS IN KANSAS (AUGUST 1, 2019)

On June 21, 2018, the United States Supreme Court issued its decision in the case of *South Dakota v. Wayfair, Inc.* et al. In its decision, the Court overturned the requirement established by prior rulings that a remote seller must have a physical presence in a state before that state can require the remote seller to collect that state's sales or use tax. This Notice is intended to provide guidance to remote sellers doing business in Kansas.

Remote Seller

A retailer who sells tangible personal property and/or services into a state where it does not have physical presence is commonly referred to as a "remote seller".

Requirement to Register and to Collect and Remit Sales Tax

Kansas imposes its sales and use tax collection requirements to the fullest extent permitted by law. Specifically, as noted above, K.S.A. 79-3702(h)(1)(F) provides that a retailer doing business in this state means:

(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.

Kansas can, and does, require on-line and other remote sellers with no physical presence in Kansas to collect and remit the applicable sales or use tax on sales delivered into Kansas. Accordingly, a remote seller must register with Kansas and obtain a sales and/or use tax account number.

Remote sellers who are not already registered with the Kansas Department of Revenue must register and begin collecting and remitting Kansas sales and/or use tax by October 1, 2019. The Department will not enforce the statutory requirements to collect and remit on these remote sellers for sales made into Kansas prior to October 1, 2019.

Registration

Kansas is a full member of the Streamlined Sales and Use Tax Governing Board (“SSTGB”). Remote sellers can register for all 24 Streamlined member states (AR, GA, IN, IA, KS, KY, MI, MN, NE, NV, NJ, NC, ND, OH, OK, RI, SD, TN, UT, VT, WA, WV, WI and WY) by completing one online application through the Streamlined Sales Tax Registration System (“SSTRS”). There is no fee to complete and submit this online registration form that is available at www.sstregister.org

Remote sellers can also register with Kansas specifically by visiting www.ksrevenue.org and signing into the Department’s Customer Service Center. After completing the application, a confirmation number will be issued for both the registration and account number(s). In the alternative, a completed business tax application may be mailed or faxed to the Department, or a principal of the business may apply in person. For complete instructions about the application process, you may obtain Pub. KS-1216, Business Tax Application and instructions from our website. General questions about business registrations should be directed to 785-368-8222.

It is important to note that failure to register may result in administrative enforcement action.

Collecting and Remitting

Certified Service Providers. If a remote seller registers through the SSTRS and needs assistance calculating the tax, preparing its returns, and remitting the appropriate sales and use taxes in any of the Streamlined member states, the SSTGB has contracts with various certified service providers (“CSP”). A CSP is an agent certified under the Streamlined Sales and Use Tax Agreement to perform many of the seller’s sales and use tax functions. CSP services are provided free to qualifying volunteer remote sellers. To learn more about the CSP program, see the FAQs related to certified service providers at www.streamlinedsalestax.org

Kansas Department of Revenue. The Kansas Department of Revenue has a number of publications that address different aspects of the Kansas sales and use tax, including what is subject to tax, how to calculate the tax, and how to file sales and use tax returns and remit the tax. In particular, please note our Pub. KS-1510, Kansas Sales and Compensating Use Tax which provides general information and a list of other sales and use tax publications.

Sourcing Rules

As previously noted, Kansas participates in the Streamlined Sales Tax Project (SSTP). Since July 1, 2003, Kansas has been a destination-based sourcing state. Under SSTP destination-based sourcing rules, sales tax is imposed at the rate determined by, and is paid to, the jurisdiction where the purchaser takes delivery or possession of the purchased item(s). For remote sellers, this is frequently the jurisdiction into which items are mailed or shipped.

General information regarding sourcing rules is available in Pub KS-1510. More specific information is found in K.S.A. 79-3669 through 79-3673.

Marketplace Facilitators

A person who is a marketplace facilitator should contact the Department concerning entering into a voluntary compliance agreement with the Department.

The term “person” is defined to include “any individual, firm, copartnership, joint adventure, association, corporation, estate or trust, receiver or trustee, or any group or combination acting as a unit, and the plural as well as the singular number”. K.S.A. 79-3602(z).

A marketplace facilitator is a person who, pursuant to an agreement with a retailer, facilitates sales by such retailer through a physical or electronic marketplace operated by the person, and:

- (i) engages directly or indirectly, through one or more affiliated persons in any of the following:
 - (1) transmitting or otherwise communicating the offer or acceptance between a buyer and retailer;
 - (2) owning or operating the infrastructure, electronic or physical, or technology that brings buyers and retailers together;
 - (3) providing a virtual currency that buyers are allowed or required to use to purchase products from the retailer; or
 - (4) software development or research and development activities related to any of the activities described herein, if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and
- (ii) engages in any of the following activities with respect to the retailer’s products:
 - (1) payment processing services;
 - (2) fulfillment, delivery or storage services;
 - (3) listing products for sale;
 - (4) setting prices;
 - (5) branding sales as those of the marketplace facilitator;
 - (6) order taking;
 - (7) advertising or promotion; or
 - (8) providing customer service or accepting or assisting with returns or exchanges.

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:

Taxpayer Assistance Center
Kansas Department of Revenue
Scott Office Building, 1st Floor
120 SE 10th Ave
P. O. Box 3506
Topeka, KS 66601-3506
Phone: 785-368-8222
Hearing Impaired TTY: 785-296-6461
Fax: 785-291-3614