**Private Letter Ruling**

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| **Ruling Number:** | **P-2010-006** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Manufacturer and third-party rebates.** |
| **Keywords:** |  |
| **Approval Date:** | **09/09/2010** |

**Body:**

Office of Policy & Research

September 9, 2010

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XXXX

RE: Your letter dated July 9, 2010

Dear XXXX:

Thank you for your recent letter. You ask how Kansas sales tax laws apply to manufacturer and third-party rebates. Rebates are addressed in K.S.A. 79-3602(ll) and K.A.R. 92-19-16a(e).

K.S.A. 79-3602(ll) defines "sales or selling price":

(ll)(1) "Sales or selling price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:
(A) The seller's cost of the property sold;
(B) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller and any other expense of the seller;
(C) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
(D) delivery charges; and
(E) installation charges.
(2) **"Sales or selling price" includes consideration received by the seller from third parties if:**
**(A) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;**
**(B) the seller has an obligation to pass the price reduction or discount through to the purchaser;**
**(C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and**
**(D) one of the following criteria is met:**
**(i) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;**
**(ii) the purchaser identifies to the seller that the purchaser is a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or**
**(iii) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.**
(3) "Sales or selling price" shall not include:
(A) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
(B) interest, financing and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;
(C) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser;
(D) the amount equal to the allowance given for the trade-in of property, if separately stated on the invoice, billing or similar document given to the purchaser; and
(E) commencing on July 1, 2006, and ending on June 30, 2009, cash rebates granted by a manufacturer to a purchaser or lessee of a new motor vehicle if paid directly to the retailer as a result of the original sale. *(Emphasis added).*

The exception for motor vehicle rebates mentioned in Subsection (3)(E) of K.S.A. 79-3602(ll) expired on June 30, 2009. Because of this, manufacturers' rebates currently do not reduce tax base for the retail sale of a motor vehicle.

Subsection (e) of K.A.R. 92-19-16a provides:

(e) For purposes of this regulation, "rebate" shall mean a return of part of the amount paid for a product after the time of sale, which is commonly obtained by sending proof of purchase to the manufacturer. Like manufacturers' coupons, a manufacturer's rebate is a form of payment. Therefore, even if a manufacturer's rebate is assigned to a retailer at the time of sale, the rebate shall not reduce the amount that is subject to sales tax except for a manufacturer’s rebate on a new motor vehicle that is assigned to the dealer at the time of sale as specified in K.A.R. 92-19-16b.

As noted above, the exception discussed in the last sentence no longer applies and the tax base for the sale of a motor vehicle by the amount of a motor vehicle manufacturer's rebate that the buyer assigns to the dealer at the time of sale.

Your letter states:

[I]n an attempt to expedite the rebate process, retailers, such as XXXX, have agreed to provide customers with instant point of sale rebates. Thereby, customers are no longer required to submit rebate forms and purchase documentation to third parties that are providing the rebate. Instead, the retailer will be responsible for submitting the necessary sales documentation to the third party and upon approval of the documentation, the retailer will reimburse the retailer for the instant point of sale rebate the retailer provided to the customer.

For example, XXXX's retail selling price for a certain qualifying energy efficient appliance is $1,000. Upon purchasing the qualifying appliance, a customer will receive a $100 instant point of sale rebate. The amount of the applicable rebate will be identified and separately itemized on the customer's receipt. After submitting the appropriate sales documentation to the participating third party (either the appliance manufacturer or utility company), XXXX will be reimbursed by the third party for the $100 point of sale rebate XXXX provided to the customer.

You pose four questions about the taxability of these "instant point of sale rebates." I will repeat each question and then answer it:

1) If XXXX is reimbursed by an appliance manufacturer for the point of sale rebate XXXX provided to a customer who purchased a qualifying energy efficient appliance, should XXXX charges sales tax on the $1,000 retail selling price or on the $900 net selling price ($1,000 retail selling price less the $100 rebate.

Answer: Sales tax should be charged on the $1,000 selling price. *K.A.R. 92-19-16a(e); Compare K.S.A. 2009 Supp. 79-3602(ll)(2) with XXXX's statement: "The amount of the applicable rebate will be identified and separately itemized on the customer's receipt."*

2) If XXXX is reimbursed by a utility company for a point of sale rebate XXXX provided to a customer who purchased a qualifying energy efficient appliance, should XXXX charge sales tax on the $1,000 retail selling price or on the $900 net selling price ($1,000 retail selling price less the $100 rebate.

Answer: Sales tax should be charged on the $1,000 selling price. *K.A.R. 92-19-16a(e); Compare K.S.A. 2009 Supp. 79-3602(ll)(2) with XXXX's statement: "The amount of the applicable rebate will be identified and separately itemized on the customer's receipt."*

3) Would the application of the state sales tax in issue number 2 above be treated any differently if the money used by the utility company for the rebate program was funded by a state or local government agency? For example, the utility company would reimburse XXXX through special funding obtained from the State's Public Utility Commission.

Answer: No. Sales tax should be charged on the $1,000 selling price. Purchases that are directly paid for by the State of Kansas or one of its political subdivisions are only exempt if the item being purchased is for the "exclusive use" of the government entity. *K.S.A. 2009 Supp. 79-3606(b).* Here the goods that are purchased and partially paid for with a government check are for the customer's own use and not for the "exclusive use" of the government entity that issues the payment. The department previously ruled that the value of coupons issued by the Department of Commerce's National Telecommunications and Information Administration in accordance with its Digital-to-Analog Converter Box Coupon Program did not reduce that tax base of the converter boxes that were paid for, in part, by the coupon issued by the Federal government.

4) If XXXX is reimbursed directly from a state or local government agency for the point of sale rebate XXXX provided to a customer who purchased a qualifying energy efficient appliance, should XXXX charge sales tax on the $1,000 retail selling price or on the $900 net selling price ($1,000 retail selling price less $100 rebate)?

Answer: Sales tax should be charged on the $1,000 selling price. Purchases that are directly paid for by the State of Kansas or one of its political subdivisions are only exempt if the item being purchased is for the "exclusive use" of the government entity. *K.S.A. 2009 Supp. 79-3606(b).* Here the item being purchased that is partially paid for with a government check is for the customer's own use and not for the "exclusive use" of the government entity that makes the payment.

The treatment of rebates that you discuss was the same treatment that the Kansas legislature provided for vehicle manufacturer's rebates in Subsection (3)(E) of K.S.A. 79-3602(ll), which expired on June 30, 2009. This provision was an exception to the rule since it allowed sales tax to be calculated on the agreed upon selling price less the amount of a manufacturer's rebate assigned to the motor vehicle dealer at the time of sale. This "exception" shows the rule is that rebates assigned to a retailer at the time of sale do not reduce the tax base on which sales tax is figured.

This is a private letter ruling pursuant to K.A.R. 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This ruling will be revoked in the future by the operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or published revenue ruling, that materially effects this private letter ruling. If you have any additional questions, please call me at 785-296-3081.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 09/13/2010 Date Modified: 09/13/2010**