

NOTICE 22-01

EXEMPT SALES OF FENCING MATERIALS AND SERVICES

(JULY 1, 2022)

During the 2022 Legislative Session House Bill 2239 was passed and signed into law. Section 45 of the Bill amends K.S.A. 79-3606d to provide for an exemption from sales tax on purchases on and after January 1, 2021 to reconstruct, repair, or replace any fence that was damaged or destroyed by a wildfire, flood, tornado or other natural disaster and for the purpose to enclose land devoted to agricultural use. The fence must be located within an area declared to be a disaster by the federal, state or local government. This section also provides a permanent exemption from sales on purchases of tangible personal property and services made on or after July 1, 2022 to construct, reconstruct, repair or replace any fence that is used to enclose land devoted to agricultural use.

As amended, K.S.A. 79-3606d provides:

(a) (1) The following shall be exempt from the tax imposed by the Kansas retailers' sales tax act: All sales of tangible personal property and services purchased ~~during calendar years 2017 and 2018~~ *on and after January 1, 2021, and purchased within two years of the date of the applicable disaster declaration necessary to reconstruct, repair or replace any fence that was damaged or destroyed by ~~wildfires~~ a wildfire, flood, tornado or other natural disaster occurring ~~during calendar years 2016 and 2017~~ on and after January 1, 2021, and the purpose for which is to enclose land devoted to agricultural use.*

(2) *A taxpayer shall be eligible for the exemption pursuant to this section if the affected property containing the damaged or destroyed fencing is located within an area declared to be a disaster by the federal, state or local government.*

(3) Sales tax paid on and after January 1, ~~2017~~ 2021, upon the gross receipts received from any such sale shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this section. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee. Any person reconstructing, repairing or replacing such property, or any person who shall contract for the reconstruction, repair or replacement of any such property shall obtain from the state an exemption certificate for the project involved. The certificate shall be furnished to the person or contractor to purchase materials and lease machinery and equipment for such project. The person or contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers

shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the person that obtained the exemption certificate, a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection.

~~(b)~~(4) *As used in this subsection, "wildfire" means a fire that spreads rapidly over grassland, woodland or brush creating unwanted and unplanned destruction.*

(b) On and after July 1, 2022, all sales of tangible personal property and services necessary to construct, reconstruct, repair or replace any fence that is used to enclose land devoted to agricultural use shall be exempt from the tax imposed by the Kansas retailers' sales tax act.

(c) The provisions of this section shall be ~~deemed to be~~ a part of and supplemental to the Kansas retailers' sales tax act.

For fencing destroyed by wildfire, flood, tornado, or other natural disaster on and after January 1, 2021 and prior to July 1, 2022, in which expenditures have already been made, the exemption allowed by the statute can be claimed by submitting [form ST-3, Kansas Application for Sales Tax Refund of Fencing Materials and/or Services](#). Please be sure to submit all the information and documents requested on the form at the time you file your claim for refund. Failing to do so will delay or may even prevent issuance of a refund. Please note refunds will only be made for sales tax paid to a Kansas retailer. Sales tax paid on purchases from a non-Kansas retailer (for example, a retailer in Oklahoma) will not be refunded. You should allow at least 45 days for processing of any refund claim.

For fencing destroyed by wildfire, flood, tornado, or other natural disaster on and after January 1, 2021 and prior to July 1, 2022, in which expenditures have NOT been made, the exemption allowed by statute can be claimed by submitting form ST-28F, Agricultural Exemption Certificate to the retailer from whom the purchases are being made. ST-28F can be found at <https://www.ksrevenue.gov/pdf/st28f.pdf>.

On and after July 1, 2022, all sales of tangible personal property and services necessary to construct, reconstruct, repair or replace any fence that is used to enclose land devoted to agricultural land shall be exempt from sales tax. The purchaser must provide form ST-28F, Agricultural Exemption Certificate to the retailer from whom the purchases are being made. Contractors and repairmen providing the service to construct, reconstruct, repair or replace any fence that is used to enclose land devoted to agricultural land may use this certificate to purchase the materials and labor necessary to construct, reconstruct, repair or replace fencing.

Fencing materials that qualify for exemption include, but are not limited to: barbed wire; T-posts; concrete mix; post caps; T-post clips; screw hooks; nails; staples; gates; electric fence posts; electric insulators, and electric fence chargers.

Retailers/sellers should obtain the appropriate exemption certificate from the customer at the time of the sale and no later than 90 days subsequent to the date of sale. An exemption certificate relieves a seller from collecting sales tax if it has obtained the required identifying information and the reason for claiming the exemption at the time of purchase. A seller should: 1) verify the

identity of the person or entity presenting the exemption certificate; and 2) maintain the fully completed exemption certificate in the sales tax records for at least three years.

TAXPAYER ASSISTANCE

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