

Notice

Notice Number: Retail Sales Involving Federal Excise Tax
Tax Type: Kansas Retailers' Sales Tax
Brief Description: Federal Excise Tax Taxability
Keywords:

Body:

NOTICE

TO: All Retailers' Registered to Collect Kansas Retailers' Sales Tax

FROM: KANSAS DEPARTMENT OF REVENUE

RE: Retail Sales involving the Federal Excise Tax.

The Kansas Department of Revenue has been asked whether or not the federal excise tax, as provided for in the Internal Revenue Code, Section 4001 *et seq.*, should be part of the gross receipts subject to Kansas Retailers' Sales tax.

KSA 79-3603(a) imposes a, "tax at the rate of 4.25% upon the gross receipts received from the sale of tangible personal property at retail within this state."

KSA 79-3602(h) defines "Gross receipts" as the, "total selling price or the amount received as defined in this act, in money, credits, property or other consideration valued in money from sales at retail within this state".

Internal Revenue Code, Section 4001 *et seq.*, imposes a federal excise tax on the sale of passenger vehicles, heavy trucks and trailers, boats, aircraft, jewelry, furs.

The Kansas Department of Revenue hereby directs that the Federal Excise tax imposed on the sale of passenger vehicles, heavy trucks and trailers, boats, aircraft, jewelry, furs, should not be included in the gross receipts subject to Kansas Retailers' Sales tax. The federal Excise tax **shall** be separately stated on the billing or invoice if it is to be excluded from the sales tax base.

The above rule should apply to all leases of passenger vehicles over one year in duration, and to all leases of boats and aircraft (IRC Sec 4011) regardless of the duration of the lease on boats and aircraft.

In cases of short term leases of passenger vehicles (less than one year), and all leases of furs, jewelry, aircraft, heavy trucks and trailers, the federal excise tax should be included in the gross receipts of the rental charge subject to the Kansas Retailers' Sales tax. The rationale for this position is that the Rental Agency is considered to have made the first retail purchase upon which the federal excise tax is imposed, [IRC 4011(c)(1) & IRC 4011(c)(2)(B)(ii) and IRC 4052(f)]. Therefore, in cases of short term leases of passenger vehicles, and all leases of furs, jewelry, aircraft, heavy trucks and trailers, the federal excise tax is on the retailer and not on the consumer. Kansas Administrative Regulation 92-19-55(f) is applicable to "taxes" on the retailer:

KAR 92-19-55(f) "Sales tax shall be imposed on the total amount of each lease payment which the lessee is obligated under the contract to pay to the lessor for continued use of the tangible personal property, with no deduction or exclusion from the lease price for insurance, taxes, service or maintenance contracts, handling charges, administration charges, late fees, repair or service charges, or any other charges regardless of how any contract, invoice or other evidence of the transaction is stated or computed and whether separately billed or segregated on the same bill.

Thus, the federal excise tax and any charges associated with the financing of the federal excise tax are to be included in the gross receipts subject to Kansas Retailers' Sales tax in instances of short term leases of passenger vehicles, and all leases of furs, jewelry, aircraft, heavy trucks and trailers.

Date Composed: 10/06/1997 **Date Modified:** 10/10/2001

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