



Exemption Certificates

This booklet is designed to help businesses properly use Kansas sales and use tax exemption certificates as buyers and as sellers. It explains the exemptions currently authorized by Kansas law and includes the exemption certificates to use. Businesses with a general understanding of Kansas sales tax rules and regulations can avoid costly errors. Use this guide as a supplement to the Kansas Department of Revenue's basic sales tax publication, KS-1510, Kansas Sales and Compensating Use Tax.

As a registered retailer or consumer, you will receive updates from the Kansas Department of Revenue when changes are made in the laws governing sales and use tax exemptions. Keep these notices with this booklet for future reference. You may also obtain the most current version of any exemption certificate or publication from our website.



TABLE OF CONTENTS

RETAILER RESPONSIBILITIES	3	USING EXEMPTION CERTIFICATES	13
The Cardinal Rule		Completing the Certificate	
What is an Exemption Certificate?		Penalties for Misuse	
Accepting Exemption Certificates			
Blanket Exemption Certificates		SAMPLE EXEMPT ENTITY CERTIFICATE	15
Record Keeping			
BUYING YOUR INVENTORY	4	EXEMPTION CERTIFICATES	
Resale Exemption Certificate Requirements		Agricultural (ST-28F)	17
Kansas Sales Tax Account Numbers		Aircraft (ST-28L)	18
Items Purchased Must Be For Resale		Aviation Fuel Exemption (ST-28LA)	19
Sample Completed Resale Exemption Certificate		Consumed in Production (ST-28C)	20
SALES TAX EXEMPTIONS	6	Designated or Generic (ST-28)	21
Exempt Buyers		Direct Mail Sourcing (ST-31)	23
Items Exempt from Sales Tax		Dry Cleaning & Laundry Retailer (ST-28X)	24
Uses that are Exempt		Ingredient or Component Part (ST-28D)	25
The Utility Exemption		Integrated Production Machinery & Equipment (ST-201)	26
SPECIAL SITUATIONS	9	Interstate Common Carrier (ST-28J)	28
Contractors		Multi-Jurisdiction (ST-28M)	30
Project Exemption Certificates		Project Exemption Request Exempt Entities (PR-76)	32
Manufacturers and Processors		Project Exemption Request (PR-70b)	34
Wholesalers		Project Completion Certification (PR-77)	36
Paying Tax on Personal Use of Inventory		Railroad (ST-28R)	37
When in Doubt...		Resale (ST-28A)	38
RELATED TOPICS	12	Retailer/Contractor (ST-28W)	39
Audit Issues		Sales and/or Transient Guest Tax for Lodging (ST-28H)	40
Local Sales Tax		Streamlined Sales Tax (PR-78SSTA)	41
Out-of-State Sales		Tire Retailer (ST-28T)	43
Compensating Use Taxes		U. S. Government (ST-28G)	44
		Utility (ST-28B)	45
		Vehicle Lease or Rental (ST-28VL)	47
		Veterinarian (ST-28V)	48
		Warehouse Machinery & Equipment (ST-203)	49

If there is a conflict between the law and information found in this publication, the law remains the final authority. Under no circumstances should the contents of this publication be used to set or sustain a technical legal position. A library of current policy information is also available on the Kansas Department of Revenue's website at: ksrevenue.org



THE CARDINAL RULE

Kansas retailers are responsible for collecting the full amount of sales tax due on each sale to the final user or consumer. All Kansas retailers should follow this cardinal rule:

All retail sales of goods and enumerated taxable services are considered taxable unless specifically exempt.

Therefore, for every sale of merchandise or taxable service in Kansas, the sales receipt, invoice, or bill **MUST** either:

- show that the total amount of sales tax due was collected, **or**
- be accompanied by a Kansas exemption certificate or Form PR-78SSTA (Streamlined Sales Tax Agreement Certificate of Exemption).

WHAT IS AN EXEMPTION CERTIFICATE?

An exemption certificate is a document that a buyer presents to a retailer to claim exemption from Kansas sales or use tax. It shows why sales tax was not charged on a retail sale of goods or taxable services. The buyer completes and furnishes the exemption certificate, and the seller keeps the certificate on file with other sales tax records.

An exemption certificate must be completed in its entirety, and should:

- explain why the sale is exempt,
- be dated,
- describe the property being purchased unless using Form PR-78SSTA, and
- contain the seller's name and address and the buyer's name, address, and signature.

Some exemption certificates also require a buyer to furnish the Kansas tax account number or request a description of the buyer's business. The exemption certificates for nonprofit organizations require the exempt entity's tax ID number.

The Kansas exemption certificates that begin on page 15 meet these requirements. The requirement also applies to Form PR-78SSTA. When the appropriate certificate is used, and all the blanks are accurately filled out, the certificate may be accepted by a retailer.

ACCEPTING EXEMPTION CERTIFICATES

An exemption certificate relieves a seller from collecting sales tax if it has obtained the required identifying information as determined by the director 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 your sales tax records for at least three years.

You should obtain the appropriate exemption certificate from your customer at the time of the sale and **no later** than 90 days subsequent to the date of sale.

However, some customers claim to be exempt only after the goods or services have been delivered, and deduct the tax from the bill. When this happens, you are still responsible for obtaining an exemption certificate from the customer. If you are unable to secure an exemption certificate the sale is considered taxable, and as the retailer, you will be liable for the tax.

BLANKET EXEMPTION CERTIFICATES

If you make recurring exempt sales of the same type to the same customer, you are not expected to obtain an exemption certificate for each transaction. Kansas law provides that a seller is relieved of liability for the tax when he obtains a blanket exemption certificate from a purchaser with which the seller has a "recurring business relationship." Such certificate need not be renewed or updated when there is a recurring business relationship between the buyer and seller. A "recurring business relationship" exists when a period of no more than 12 months elapses between sales. All of the certificates in this booklet may be used as blanket certificates.

All Tax-Exempt Entity Exemption Certificates (sample shown on page 15) contain an expiration date. If a Tax-Exempt Entity Exemption Certificate is obtained by the seller it can be used for all sales made prior to the expiration date as provided on the certificate. There is no need for the seller to obtain multiple copies of this Tax-Exempt Entity Certificate.

RECORD KEEPING

You must keep all sales tax records, including exemption certificates, for your current year of business and at least three prior years. **DO NOT** send exemption certificates to the Kansas Department of Revenue with your sales tax return.



BUYING YOUR INVENTORY

Probably the most widely used sales tax exemption is for the purchase of items intended for resale. When buying your inventory from a wholesaler or another retailer, or selling inventory items to another retailer, you will use a Resale Exemption Certificate (ST-28A) or Form PR-78SSTA.

RESALE EXEMPTION CERTIFICATE REQUIREMENTS

A resale exemption certificate has two requirements: 1) the **items purchased must be for resale** in the usual course of the buyer's business; and 2) the **buyer must have a Kansas sales tax account number**, except in drop shipment situations.

A retailer should make sure both requirements are provided before accepting a Resale Exemption Certificate from the customer. The following discussion of these requirements will help you avoid costly errors.

ITEMS PURCHASED MUST BE FOR RESALE

A buyer can use a resale exemption certificate only to purchase the property that will be for resale and not for personal or other nonexempt use. The property being purchased must be of the type normally sold at retail in the usual course of the buyer's business. For example, a restaurant owner cannot use an exemption certificate to buy tires or appliances since a restaurant does not customarily sell these items.

KANSAS SALES TAX ACCOUNT NUMBERS

The Kansas Department of Revenue assigns a sales tax account number to you after you complete a **Business Tax Application (CR-16)**. The account number is printed on your Retailers' Sales Tax Registration Certificate and is used to report and pay the sales tax you collect from your customers to the Kansas Department of Revenue. It is also the number that **MUST** be provided on a Resale Exemption Certificate (ST-28A) or Form PR-78SSTA.



CAUTION: DO NOT accept a photocopy of a customer's sales tax registration certificate ***instead of*** a completed exemption certificate. You cannot exempt a sale from tax simply because the buyer is a registered retailer.

A common misconception is that a sales tax account number is also a "tax-exempt" number. However, a sale is not exempt simply because the buyer has a sales tax number. A tax number only proves the customer is a registered retailer; it does not certify that the item(s) purchased are exempt (for resale or any other reason).

NOTE: A completed exemption certificate must be obtained from the customer before the sale is exempt.

Retailers from other states

As a general rule, wholesalers and buyers from other states not registered in Kansas should use the Multi-Jurisdiction Exemption Certificate (ST-28M) or a PR-78SSTA to buy items for their resale inventory. These certificates may also be used by wholesalers to buy their inventory. If the inventory item purchased by an out-of-state retailer is drop shipped to a Kansas location, **the out-of-state retailer may provide to the third party vendor a Resale Exemption Certificate from any state, or the Multi-Jurisdiction Exemption Certificate showing registration for any state.** They may also use PR-78SSTA exemption certificate. The law does not require that they have a Kansas registration in order for the sale to be exempt.

Sales Tax Account Number Format

Your Kansas sales tax account number has three distinct parts:

① ② ③
↓ ↓ ↓
004-481880059F-01

① Tax Type. Each tax type administered by the Kansas Department of Revenue has been assigned a number. The "004" is the number assigned to Retailers' Sales Tax. The tax type number appears on your registration certificate and on the sales tax return.

② Account Number = EIN (Employer Identification Number). The account number is your federal EIN, followed by the letter "F." The nine-digit EIN is issued by the Internal Revenue Service to identify employers and businesses.

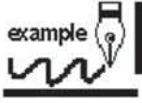
If you are not required to have an EIN, the Kansas Department of Revenue will create an account number for you. These account numbers begin with a "K" (or an "A" if registering online with the Kansas Business Center) followed by eight numbers and the "F." For example:

004-K12345678F-01

③ Numerical Suffix. The two-digit code at the end of the number is for the Kansas Department of Revenue's use. For most taxpayers it is "01." This code could either denote the number of locations or number of registrations under this EIN, "K", or "A" number.

SAMPLE COMPLETED RESALE EXEMPTION CERTIFICATE

All the blanks on an exemption certificate should be completed before the exemption certificate may be accepted by a retailer (page 14). Use the Resale Exemption Certificate illustrated in the following example as a guide. Also, the Form PR-78SSTA may be used.



James Adams owns a convenience store in Topeka, and buys his inventory from Wholesale Candies and Snacks. His sales tax account number is 004-74000000F-01. The Resale Exemption Certificate he completed for his vendor is below. He also purchased display racks from this vendor, but since he is the final consumer of the racks, they were invoiced separately and he paid the sales tax on them.

**KANSAS DEPARTMENT OF REVENUE
RESALE EXEMPTION CERTIFICATE**

The undersigned purchaser certifies that the tangible personal property or service purchased from:

Seller: Wholesale Candies

<small>Business Name</small>			
Address: <u>123 Main Street</u>	<u>Topeka</u>	<u>KS</u>	<u>66612</u>
<small>Street, RR, or P. O. Box</small>	<small>City</small>	<small>State</small>	<small>Zip</small>

will be **resold** by me in the form of tangible personal property or repair service. I hereby certify that I hold valid Kansas sales tax registration number 004-74000000F-01, and I am in the business of selling food, gasoline, and beverages
(May attach a copy of registration certificate)

(Description of product(s) sold; food clothing, furniture, etc.)

Description of tangible personal property or services purchased: candy, gum, packaged snacks

I understand and agree that if the items purchased with this certificate are used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business, I am required to report and pay the sales tax, based upon the purchase price of the items.

Purchaser: James Adams Convenience Store

<small>Name of Kansas Retailer</small>			
Address: <u>2171 Southwest Blvd</u>	<u>Topeka,</u>	<u>KS</u>	<u>66611</u>
<small>Street, RR, or P. O. Box</small>	<small>City</small>	<small>State</small>	<small>Zip</small>

Signature: James Adams Date: 4/28/11

THIS CERTIFICATE MUST BE COMPLETED IN ITS ENTIRETY.

WHO MAY USE THIS CERTIFICATE? Only those businesses and organizations that are registered to collect Kansas sales tax and provide their Kansas sales tax registration number on this form may use it to purchase inventory without tax. For additional information see Publication KS-1520, *Kansas Exemption Certificates*.

Nonprofit groups or organizations exempt by law from collecting tax on their retail sales of tangible personal property (such as a PTA or a nonprofit youth development organization) should use the exemption certificate issued to it by the Department of Revenue when buying items for resale.

Wholesalers and buyers from other states not registered in Kansas should use the Multi-Jurisdiction Exemption Certificate, Form ST-28M, to purchase their inventory. HOWEVER, if the inventory item purchased by an out-of-state retailer who has sales tax nexus with Kansas is drop shipped to a Kansas location, the out-of-state retailer must provide to the third party vendor a Kansas sales tax registration number, either on this certificate or the Multi-Jurisdiction Exemption Certificate, for the sale to be exempt. If the out-of-state retailer DOES NOT have sales tax nexus with Kansas, it may provide the third party vendor a resale exemption certificate evidencing qualification for a resale exemption, **regardless** of the state in which the retailer is registered for sales tax.

Contractors, subcontractors, or repairmen may not use this certificate to purchase their materials, parts, or tools. Retailer/Contractors should use a Retailer/Contractor Exemption Certificate, Form ST-28W, to purchase their resale inventory.

WHAT PURCHASES ARE EXEMPT? Only goods or merchandise intended for resale (inventory) are exempt. Tools, equipment, fixtures, supplies, and other items purchased for business or personal use are TAXABLE since the buyer is the final consumer of the property.

The items purchased with this certificate must correspond to the type of business buying them. For example, a retail clothing store may only reasonably purchase items of wearing apparel and accessories with this certificate. All other kinds of items are not usually sold by a clothing store to their customers and, therefore, cannot be purchased with this certificate.

LABOR SERVICES. This certificate applies ONLY to items of tangible personal property. A contractor may not use an exemption certificate to purchase the labor services of another contractor or subcontractor. Taxable labor services performed by a contractor can ONLY be purchased without tax with a Project Exemption Certificate issued by the department or its authorized agent.

RETAINING THIS CERTIFICATE: Sellers should retain a completed copy of this certificate in their records for at least three years from the date of sale. A seller is relieved of liability for the tax if it obtains a completed exemption certificate from a purchaser with which the seller has a recurring business relationship. A certificate need not be renewed or updated when there is a recurring business relationship between the buyer and seller. A recurring business relationship exists when a period of no more than 12 months elapses between sales transactions.

SALES TAX EXEMPTIONS

The sales tax exemptions authorized by Kansas law fall into three general categories. These are: **entities** who are exempt, specific **items** that are exempt, and **uses** of an item that makes it exempt. This section explains each category with examples and exceptions noted. Additional information about an exemption is part of the certificate designed for it.

EXEMPT ENTITIES

All of the following entities are exempt from sales tax when making a **direct purchase** of goods. Most, but not all of these entities, are also exempt when making a direct purchase of a taxable service. The Tax-Exempt Entity Exemption Certificate issued by the Kansas Department of Revenue to the entity states whether its exemption is limited to just goods or whether the exemption extends to services as well. A direct purchase is one that is billed directly to the exempt buyer. A retailer can require payment by check, voucher or warrant of the exempt entity, but it is not mandatory to do so.

- The U.S. Government, its agencies and instrumentalities
- The state of Kansas and **Kansas** political subdivisions: school districts, counties, cities, etc.
- Elementary and secondary schools
- Noncommercial educational television and radio stations
- Nonprofit blood, tissue and organ banks
- Nonprofit educational institutions
- Nonprofit 501(c)(3) historical societies
- Nonprofit hospitals
- Nonprofit 501(c)(3) museums
- Nonprofit 501(c)(3) primary care clinics
- Nonprofit 501(c)(3) religious organizations
- Nonprofit 501(c)(3) zoos
- Nonprofit youth development programs
- Parent-teacher organizations (PTA or PTO)

FOR A COMPLETE LIST OF EXEMPT ENTITIES SEE PAGE 16.

The 501(c)(3) designation refers to the section of the Internal Revenue Code under which a nonprofit entity has been granted an exemption from federal (and state) **income** tax. Although used to define who qualifies for an exemption, **a nonprofit 501(c)(3) designation does not mean the organization is automatically exempt** from sales tax. Only the entities listed under Kansas sales tax statutes are exempt from paying Kansas sales tax on their direct purchases when the appropriate exemption certificate is completed and provided to the retailer.

Although exempt by law, these entities must still support their exemption with a completed exemption certificate. This booklet contains exemption certificates that can be used for each of these exempt buyers with examples and common pitfalls to avoid or, Form PR-78SSTA can be used.

There are special rules applicable to exempt entities on purchases for certain construction projects and repair work. See *Project Exemption Certificates* (found herein).

Exception: *When the state of Kansas or nonprofit hospital operates a taxable business (such as a public cafeteria or gift shop), or when a political subdivision sells or furnishes utilities, "non-inventory items" purchased for use in these taxable businesses are taxable to the otherwise exempt group.*



A city's gas utility must pay sales tax on office equipment, pipe and vehicles used (even partially) by its gas utility. A hospital must pay sales tax on its restaurant equipment, furniture, fixtures and reusable utensils purchased for its public cafeteria.

Credit Cards

Many government agencies are issuing credit cards to employees and agents who travel or make purchases while on official business or on behalf of the agency. When the agency is responsible for payment of credit card charges, purchases made by employees with said credit card are exempt from Kansas sales or use tax as a direct purchase. When someone other than the exempt entity is responsible for payment of the credit card charge, the purchase is not automatically exempt. The appropriate exemption certificate must be obtained.

Exception: *The rental of **hotel rooms** by agents or employees of the U.S. Government while on official business is exempt regardless of the method of payment.*

Buyers who are NOT exempt

A common misconception is that **all nonprofit organizations are exempt from retailers' sales tax**. While a nonprofit status for income tax purposes may be a requirement for a Kansas sales tax exemption, nonprofit organizations that have not been granted a specific sales tax exemption must pay tax on their purchases. **Groups and organizations that are NOT EXEMPT from paying Kansas sales tax include alumni associations, charitable and benevolent organizations, clubs, labor unions, and professional associations.**

CERTIFICATES FOR TAX-EXEMPT ENTITIES

Kansas law requires that all sales tax-exempt entities obtain and utilize only exemption certificates issued by the Kansas Department of Revenue or the SSTA exemption certificate (PR-78SSTA). These certificates, an example of which is on page 15, contain the exempt entity's NAME, ADDRESS, and TAX EXEMPTION NUMBER issued by the Kansas Department of Revenue. Any sales tax-exempt entity that does not have an exemption certificate may apply online at the Kansas Department of Revenue's website.

The purpose of the tax-exempt exemption certificates is to control fraudulent tax-exempt purchases and to assist retailers, sales people and cashiers in identifying exempt entities and easily determining whether a claim for exemption is valid, based on the exempt entity's status.

Unless the seller already has it on file, if one of the entities listed on page 16 requests an exemption and they do not present the Kansas Department of Revenue-issued certificate or Form PR-78SSTA (providing the purchaser's Tax-Exempt Identification Number), the seller must deny the request. The Kansas Department of Revenue asks that you advise the purchaser to contact us for guidance.

Be advised that the tax-exempt entity exemption certificate does not apply to farmers, to purchases by the federal government, to manufacturing and processing related exemptions, or other use-based exemptions. Also, the tax-exempt ID number is separate and apart from a Kansas sales tax registration number (format 004-XXXXXXXXXXF-0X) required of anyone (including exempt entities) making retail sales of taxable goods, services or admissions in Kansas.

Sales to Exempt Entities not based in Kansas

Many of the exemptions granted under K.S.A. 79-3606 also apply to non-Kansas organizations. While a Kansas-based organization must provide its numbered certificate (or Form PR-78SSTA with the the Kansas Department of Revenue-issued identification number) to make an exempt purchase of goods or taxable services in Kansas, many non-Kansas exempt organizations will not have been issued an exempt entity ID number. While encouraged to obtain a Kansas exempt entity ID number (visit our website to apply), **a non-Kansas exempt entity (such as a school located in another state) making a direct purchase in Kansas will simply need to complete an exemption certificate for the retailer. The Designated or Generic Exemption Certificate (ST-28) has been designed for this purpose.**

ITEMS EXEMPT FROM SALES TAX

These items are enumerated in the law as exempt from sales tax:

Aircraft sales, parts, and repair services for carriers in interstate or foreign commerce; and repair, replacement and modification parts and service on all aircraft

Broadcasting equipment purchased by over-the-air free access radio and television stations to generate their broadcast signals

Drill bits & explosives used in the exploration of oil & gas

Drugs and pharmaceuticals sold to veterinarians

Farm machinery and equipment

Food sold to groups providing meals to the elderly and homebound, or sold by a nonprofit 501(c)(3) organization under a food distribution program that sells food below cost in exchange for community service

Integrated production machinery and equipment

Materials purchased by a community action group to repair or weatherize low-income housing

Medical supplies and equipment purchased by a nonprofit nursing home

Public health educational materials purchased by a nonprofit corporation for free distribution to the public

Railroad parts, materials, and services for railroad rolling stock used in interstate or foreign commerce

Rolling stock (trucks, buses, tractor-trailers, etc.), repair or replacement parts, and motor fuels purchased by ICC carriers

Warehouse machinery and equipment

Other items not taxed in Kansas include food stamp purchases, Child Nutrition Act (WIC) program purchases, lottery tickets, prescription drugs and insulin, and prosthetic and orthopedic appliances.

Prosthetic Devices/Mobility Enhancing Equipment/Oxygen Delivery, Kidney Dialysis Equipment and Enteral Feeding Systems purchased by the individual for whom prescribed in writing by a licensed physician, chiropractor, optometrist, dentist, or podiatrist are not taxed [K.S.A. 79-3606(r)]. Exempt prosthetic devices include canes, crutches, eyeglasses, orthodontic braces, prosthetic limbs and braces. Exempt mobility enhancing equipment includes chairlifts, patient lifts, bath lifts, stairlifts, railings; wheelchairs, and accessories attached to motor vehicles (such as wheelchair lifts and specialized hand or foot controls). For examples of prosthetic devices and mobility enhancing equipment see Appendices L and M of Governing Board rules at streamlinedsalestax.org.

Repair and replacement parts and labor for the exempt equipment are also not taxable if you have the original prescription order on file. Labor charges for installation of prescribed mobility enhancing equipment are exempt.

Sales of prosthetic and mobility enhancing equipment to doctors for their inventory, display or use in the performance of their duties are taxable.

NOTE: This exemption does not apply to hot tubs, whirlpools, motor vehicles, or personal property which when installed becomes a fixture to real property (except for stairlifts or railings).

USES THAT ARE EXEMPT

Items may also be exempt from sales tax because of how they are used. Items that are ingredient or component parts or are consumed in the production of property or services that are later sold to the final consumer are exempt. These two exemptions are applicable to many types of businesses.



IMPORTANT: Contractors may NOT use the Consumed in Production or the Ingredient or Component Part exemptions to buy their materials.

Ingredient or Component Part

Items that become a part of a finished product to be sold to the final consumer are exempt as ingredient or component parts. In order to qualify the item must:

- be necessary and essential to the finished product,
- be used in or on the finished product,
- become a physical part of the finished product, and
- become an ingredient or compound part of property or service for retail sale.

As a *general* rule, if the item leaves with the product and is not returned for reuse by the manufacturer or retailer, it is an ingredient part. Examples include, but are not limited to:

- paper and ink for publishing newspapers and magazines;
- containers, labels, shipping cases, twine, and wrapping paper which are not returned to the manufacturer;
- food that will be prepared and sold as meals;
- paper bags, drinking straws, and paper plates used in food sales;
- feed for commercial livestock, and
- fertilizer used in the production of plants and plant products produced for resale.

To use the Ingredient or Component Part Exemption Certificate (ST-28D) or Form PR-78SSTA, the buyer must have a Kansas sales tax account number OR a Kansas manufacturers' or processors' exemption number (see *Manufacturers and Processors* herein).

Consumed in Production

Like ingredient or component parts, items that are "consumed in production" must meet certain qualifications to be exempt. The item must be:

- necessary and essential to the process,
- used in the actual process,
- consumed or dissipated by the process within one year,
- used in the process of producing, manufacturing, processing, mining, drilling, refining or compounding of tangible personal property; the treatment of by-products or wastes from any such production process; the providing of services; the irrigation of crops; or the storage and processing of grain; and,
- not reusable for such purposes.

Examples include utilities to power manufacturing machinery, or fertilizers and insecticides used in growing crops. Additional examples are in the Consumed in Production Exemption Certificate (ST-28C).

Exempt Agricultural Uses

Since many items used in agriculture are exempt either as ingredient or component parts or are consumed in production, these two exemptions are part of the Agricultural Exemption Certificate (ST-28F). Form PR-78SSTA may also be used. Other exempt agricultural uses include:

Agricultural animal (cattle, hogs, sheep, chickens, ostriches, etc.) and aquatic animals and plants when used in the production of food for human consumption; the production of animal, dairy, poultry, or aquatic plant and animal products, fiber, or fur; or the production of offspring for the above purposes. The purchase of pleasure animals or pets is taxable.

Seeds, tree seedlings, chemicals, and services purchased and used for the purpose of producing plants to prevent soil erosion on land devoted to agricultural use.

Propane used for an agricultural purposes (i.e., propane to power farm implements or to provide heat for brooder or farrowing houses). Propane for recreational use, such as RVs and barbecue grills, is taxable.

THE UTILITY EXEMPTION

Utilities may be exempt from sales tax in much the same way as goods or services — certain buyers are exempt, and certain uses are exempt. As used here, "utilities" are electricity, gas, water or heat.

Buyers Who Are Exempt

The exempt buyers listed on page 6 do not pay sales tax on their utilities. However, when the state of Kansas, a political subdivision, or a nonprofit hospital is also engaged in a taxable business, utilities used in that business are TAXABLE, unless the use itself qualifies for exemption. Exempt and taxable uses for political subdivisions and nonprofit hospitals are as follows.

City Electric Departments. Exempt: Utilities used to generate the electricity. Taxable: Utilities used to heat, cool and/or light the generating plant and/or administrative offices.

Nonprofit Hospitals. Exempt: Utilities used to provide medical services and nonprofit hospital administration; electricity/gas to operate grills and ovens in the public cafeteria. Taxable: Utilities used by a gift shop; water to clean a cafeteria open to the general public.

Nonprofit corporations who provide nursing or foster care for children, the elderly, or disabled may also be exempt from paying sales tax on their utilities. To qualify, the Board of Tax Appeals (BOTA) must first have granted the nonprofit corporation an exemption from real estate property tax.

Exempt Utility Uses

Electricity, gas, water and heat used as an ingredient or component part; consumed in production; in the irrigation of crops; for movement in interstate commerce; for providing taxable services; and, in the severing of oil are exempt from sales tax.

NOTE: Agricultural and noncommercial residential use of electricity, gas or heat are exempt from the state sales tax, but are subject to any applicable local (city and/or county) sales tax in effect at the customer's location. Agricultural and noncommercial residential use of water is exempt from both sale and local sales tax.

Use these general guidelines and illustrations to determine if a portion of the utilities used by your business is exempt. Unless part of an integrated production operation, utilities used to light, heat, cool, clean, or maintain equipment, buildings, or business facilities are TAXABLE.

Agricultural. State Exemption: Gas and electricity use related to farming or ranching, such as the electricity needed to operate milking machines or to run a grain auger. (Local sales tax applies.) Water use related to farming and ranching is exempt from both state and local sales tax.

Consumed in Production. The utility use must meet the consumed in production criteria on page 8. Exempt: Utilities used to operate tools and manufacturing machinery. Taxable: Utilities to light, heat or cool a nonproduction area.

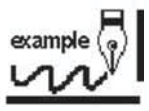
Ingredient or Component Part. The utility use must meet the definition of an ingredient or component part as

described on page 8. **Exempt:** Water to make soft drinks or other beverages. **Taxable:** Water used to clean vats and brewing equipment.

Irrigation of Crops. Exempt: Electricity or other power sources to run an irrigation pump or water applied to growing crops.

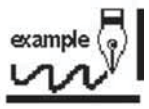
Movement in Interstate Commerce by Railroad or Public Utility. Exempt: Electricity or gas used to pump or push oil or gas through an interstate pipeline, provided the pipeline is registered with the Federal Energy Regulatory Commission. **Taxable:** Utilities used by non-interstate pipelines. Utilities used to operate railroad signal lights and switches.

Noncommercial Residential. State Exempt: Gas and electricity used in your home for nonbusiness purposes. (Local sales tax applies). **State and Local Exempt:** Water used in your home for nonbusiness purposes.



Gas and electricity used in an apartment or condominium for nonbusiness residential purposes are exempt from state sales tax but local sales tax still applies. Water used in the apartment or condominium for non-business residential purposes is exempt from both state and local sales tax.

Providing Taxable Services. To qualify, the service must be subject to sales tax. Utilities used by those who provide nontaxable services, such as a doctor, lawyer, accountant, or childcare center are TAXABLE.



Utilities used in hotel rooms that are occupied by hotel guests are exempt. Utilities for lobbies, conference rooms, hallways, administrative offices, swimming pools, and parking lots are taxable.

Severing of Oil. Exempt: Electricity or gas to power pumps that remove oil or gas from the ground. **Taxable:** Electricity or gas for lighting and other nonextraction purposes at the pump station.

Obtaining a Utility Exemption

To request an exemption for electricity, gas or water used in your business you must complete Statement for Sales Tax Exemption on Electricity, Gas or Water Furnished Through One Meter (ST-28B). You will need to complete a form for each utility meter on which you are requesting an exemption. Follow these steps to obtain an exemption on your utility.

- 1) Using the instructions and examples that accompany the form, determine your exempt percentage. You may need the assistance of a plumber or electrician to complete the formula.
- 2) Give the original completed form to your utility company along with all the workpapers and documents used to compute your "Exempt Percent." Be sure to keep a copy of the form and your work papers for your records.
- 3) The utility company may forward your exemption request to the Kansas Department of Revenue for review before granting the exemption.
- 4) Once approved, the utility will grant the exemption.



IMPORTANT: When there is a change in your "Exempt Percent," it is your responsibility to immediately file a revised utility exemption form with your utility provider.

SPECIAL SITUATIONS

CONTRACTORS

A contractor, subcontractor, or repairman (hereafter referred to as *contractor*) is any person who agrees to furnish and install parts or materials, or performs the labor service of installing the parts or materials for a specified price. Contractors are considered to be the final user or consumer of their materials and must; therefore, pay sales tax on them when purchased from their vendors.

A retailer/contractor is a contractor who **maintains an inventory of materials**. Examples of retailer/contractors are building, electrical, and plumbing supply houses that not only sell to the final consumer but also perform construction or installation work.

This distinction between a contractor and a retailer/contractor only determines **when** sales tax is paid on materials. Materials are **always** taxable unless purchased with a **Project Exemption Certificate (PEC)**.

A **contractor** must pay sales tax on supplies and materials when buying from the supplier. If the supplier is an out-of-state retailer, a contractor will pay consumers' use tax on the supplies and materials (see *Compensating Use Taxes* herein). Contractors cannot use a Resale Exemption Certificate to buy materials and supplies without sales tax.

A **retailer/contractor** must either collect sales tax when the merchandise is sold at retail or self-accrue the tax due when materials are removed from its tax-exempt resale inventory for a contract job (see *Paying Tax on Personal Use of Inventory* herein). Retailers/contractors will use the Contractor-Retailer Exemption Certificate (ST-28W) to purchase their inventory (may also use Form PR-78SSTA).

Labor Services

The services of **installing, applying, servicing, repairing, altering, or maintaining tangible personal property** are subject to sales tax. This includes work performed on tangible personal property that, once installed or applied, becomes a part of real property. However, the labor services of *installing* or *applying* are not taxable when performed in connection with the "original construction" of a building or facility. "Original construction" is defined as the:

- first or initial construction of a new building or **facility**¹,
- addition of an entire room or floor to an existing building or facility,
- construction, reconstruction, repair, replacement, remodeling or renovation of a **residence**²,

- restoration, reconstruction, or replacement of a building, facility or utility structure damaged or destroyed by fire, flood, tornado, lightning, explosion, windstorm, ice loading and attendant winds, terrorism or earthquake³,
- completion of any unfinished portion of an existing building or facility, or
- construction, reconstruction, restoration, replacement, or repair of a bridge or highway.

¹ A **facility** is a mill, plant, or refinery; oil, gas, or water well; feedlot; and a transmission and distribution line owned by a REA or municipality.

² A **residence** includes all types of dwellings where individuals customarily live — homes, apartments, nursing homes, etc.

³ A **utility structure** shall mean transmission and distribution lines owned by an independent transmission company or cooperative, the Kansas electric transmission authority or natural gas or electric public utility. A **windstorm** shall mean straight line winds of at least 80 miles per hour as determined by a recognized meteorological reporting agency or organization.

When a subcontractor is performing taxable labor services for a general contractor, the subcontractor must charge sales tax to the general contractor. A contractor may NOT use a Resale Exemption Certificate to purchase the labor services of another contractor without tax.

PROJECT EXEMPTION CERTIFICATES (PECs)

A **Project Exemption Certificate (PEC)** is a numbered document issued only by the Kansas Department of Revenue or its authorized agent (See *Agent Status* herein). As the name implies, a PEC exempts the entire project (materials and labor) from sales tax. Two types of projects may receive a project exemption. Projects for entities who are exempt, and certain economic development projects.

The following exempt **entities** qualify to use Form PR-76 to request a PEC or apply online for most construction, remodel, or repair projects:

- Kansas political subdivisions
- Nonprofit hospitals
- Nonprofit schools & educational institutions
- Nonprofit zoos
- Primary care clinics and health centers
- Religious organizations
- U.S. Government and its agencies

Form PR-78SSTA may also be used; however, the purchaser must provide a the Kansas Department of Revenue-issued PEC Number on that form.



CAUTION: The state of Kansas and its agencies DO NOT qualify for PECs (except state of Kansas correctional institutions including a privately constructed correctional institution contracted for state use and ownership). Materials purchased by contractors for a state of Kansas project are taxable. Only direct purchases by the state of Kansas or its agencies are sales tax exempt — using their the Kansas Department of Revenue issued Tax-Exempt Entity Exemption Certificate (or Form PR-78SSTA containing the Tax-Exempt Entity Identification Number issued by the Kansas Department of Revenue).

A project may also qualify for a PEC because it is an

economic development project. The qualifications are outlined in the request form PR-70b (found herein).



IMPORTANT: PECs are dated and are not retroactive. All materials purchased and all taxable labor services performed prior to the effective date of the PEC or after the expiration date are taxable. Project exemptions apply only to one specific project and expire upon completion of that project.

Agent Status for Project Exemption Certificates

Certain exempt entities may request “Agent Status” when applying online for PECs. Agent Status, once granted, will allow the following entities to complete the application online and be immediately approved for a PEC. The applicant can then print the PEC and supply it to contractors working for them. This Agent Status authority is limited to: State of Kansas Correctional Institutions, Kansas Political Subdivisions, Nonprofit Hospitals and Nonprofit Schools, and Education Institutions.

Project Exemption Steps

The following chronological steps illustrate how a PEC is requested, issued and used by the project's owner, contractors and suppliers.

- 1) A qualifying entity (petitioner) completes a request for project exemption by completing a paper application (found herein) or by applying online at ksrevenue.org. Agent Status PECs must be completed online in order that the petitioning authority be able to immediately print a PEC.
- 2) The Kansas Department of Revenue receives and approves or denies the request (Agent Status online applications are approved automatically).
- 3) If approved, the Kansas Department of Revenue issues a numbered PEC to the petitioner. Agent Status — able to immediately print a PEC once the online application is completed.
- 4) The petitioner furnishes the numbered PEC (or Form PR-78SSTA that contains the PEC number issued by the Kansas Department of Revenue) to contractors and subcontractors for the job.
- 5) Contractors and Subcontractors furnish the numbers certificate (or Form PR-78SSTA including the PEC Number issued by the Kansas Department of Revenue) to their suppliers.
- 6) Suppliers should put the certificate number on all project invoices to verify the sale of materials and/or labor is exempt.
- 7) When the project is complete, contractor(s) must furnish the Project Completion Certification (found herein) to the petitioner with a copy to the Kansas Department of Revenue.
- 8) Contractor(s) keep all project invoices for five years.

MANUFACTURERS AND PROCESSORS

Manufacturers and processors are eligible to purchase their raw materials or parts exempt from sales tax. However,

To remedy this situation, the Kansas Department of Revenue issues a manufacturers' or processors' sales tax exemption number to those manufacturers and processors that never make a retail sale, and therefore do not have a sales tax account number. Use this number on the Ingredient or Component Part Exemption Certificate (ST-28D) or Form PR-78SSTA when buying raw materials. To obtain a manufacturers' or processors' sales tax exemption number, apply online at the Kansas Department of Revenue's website.



WHOLESALE

An exemption certificate must accompany wholesale sales. When a wholesaler sells to a Kansas retailer for resale, the Resale Exemption Certificate (ST-28A) or PR-78SSTA should be used. The Multi-Jurisdiction Exemption Certificate (ST-28M) is used when a wholesaler is buying inventory, selling to another wholesaler, or selling to a retailer from another state (may also use Form PR-78SSTA).

example 

PAYING TAX ON PERSONAL USE OF INVENTORY

"The undersigned purchaser understands and agrees that if the property or services are used other than as stated above or for any other purpose that is not exempt from sales or compensating tax, the undersigned purchaser becomes liable for the tax."

To report and pay the tax on tax exempt inventory used for a taxable purpose, use the line or column of your sales tax filing entitled *Merchandise Consumed*. Retailer/contractors will also use this line or column to report the cost of materials removed from a tax exempt inventory for use on a contract job.

When there is a question that is not answered in this booklet, contact the Kansas Department of Revenue. **DO NOT GUESS.** Clarification of whether a sale is taxable or exempt will save you time in dealing with the issue in the future and could also save you money by avoiding costly sales tax deficiencies.

Office of Policy and Research
Kansas Department of Revenue
915 SW Harrison St., Room 230
Topeka, KS 66612-1588
Fax: 785-296-7928



Policy Information Library

Key Statutes and Regulations

The information in this guide is based on these statutes and regulations and others cited are in the text. They are a part of the policy library on our website.

K.S.A. 79-3602 – Sales tax definitions
K.S.A. 79-3603 – Taxing statute
K.S.A. 79-3606 – Exempting statute
K.S.A. 79-3651 – Exemption certificates
K.A.R. 92-19-25b – Exemption certificates
K.A.R. 92-19-66e – Project Exemption certificates

RELATED TOPICS

AUDIT ISSUES

Your sales tax records, including exemption certificates, are subject to audit by the Kansas Department of Revenue. If your exemption certificates are found to be missing or incomplete during an audit, you have **only 120 days** from notice by the Director of Taxation to obtain completed exemption certificates for these sales. [K.S.A. 79-3609(a)].

Since our audits usually cover a three-year period, this task can be very time-consuming. If you cannot locate the customer or the customer refuses to comply, you may become liable for the sales or use tax due on that sale, plus penalty and interest.



Avoiding Common Errors. Here are some of the most common exemption certificate errors we find during an audit with tips on how to correct or avoid making these mistakes.



An exemption certificate is incomplete.

Completing every blank on the certificate designed for that exemption will help to avoid most errors. All exemption certificates must have the name of the seller, the name and address of the purchaser, the reason it is exempt, and be signed and dated by the purchaser.

The resale, retailer/contractor, tire excise, and dry cleaning exemption certificates must also show a Kansas tax registration number for that tax type. Exemption certificates for nonprofit organizations require the exempt entity's tax identification number.



A resale exemption certificate was accepted that does not show a Kansas sales tax registration number.

A resale exemption certificate that is missing the purchaser's Kansas registration number is incomplete and, therefore, not acceptable. Furthermore, a retailer cannot accept an exemption certificate from a purchaser who does not provide a Kansas sales tax registration number except when the out-of-state purchaser for resale is having the item drop shipped to a customer in Kansas. Wholesalers and out-of-state retailers should use the Multi-Jurisdiction Exemption Certificate (ST-28M) or Form PR-78SSTA, when buying their resale inventory in Kansas.



Tax-free sales are made to a buyer that provides only a Kansas sales tax number.

A retailer cannot exempt a sale from tax simply because

the customer provides a Kansas sales tax number or a copy of a certificate of registration. A completed resale exemption certificate (or Form PR-78SSTA) must also be obtained. See *Resale Exemption Certificate Requirements* on page 4.



A retailer fails to remit sales tax to the state because the customer crossed the tax off the bill without providing a completed exemption certificate.

A retailer is still responsible for obtaining an exemption certificate *even when* the customer refuses to pay the tax. In the absence of a completed exemption certificate, the sale is taxable, and the sales tax is due.



Failure of contractors to pay tax on materials used in a project for an exempt entity (such as a school, nonprofit hospital, religious organization, the federal government) that did not obtain a PEC.

A contractor is responsible for paying the sales tax on all materials used in performing labor services, unless working under a PEC-issued by the Kansas Department of Revenue or its authorized agents (see pages 10-11). When the exempt entity has not obtained a project exemption number, materials purchased or furnished by its contractor(s) are taxable.

LOCAL SALES TAX

Each Kansas county or city has the authority to levy a local sales tax. When levied, a local sales tax rate is added to the statewide sales tax. The resulting total is collected from the consumer and then sent by the retailer to the Kansas Department of Revenue. Unless otherwise noted, a sales tax exemption exempts the sale from the state, city, county and special taxing district sales taxes. A list of all the combined state and local tax rates, Sales Tax Jurisdiction Code Booklet (**Pub. KS-1700**) can be found on our website.

OUT OF STATE SALES

Kansas sales tax law applies only within the boundaries of Kansas. When goods or merchandise are shipped or delivered outside of Kansas (and not returned to a point in Kansas), Kansas sales tax is not due. Out-of-state delivery may be made by the seller, a common carrier, or through the mail.

Since these sales are a deduction on your sales tax return like an exempt sale, your books and records must show the merchandise was delivered outside Kansas. Acceptable proof of an out-of-state sale is a:

- Waybill or bill of lading, showing delivery to another state,
- Post office, insurance, or registry receipt,
- Trip sheet signed by the seller's delivery agent, showing the address and signature of the person outside Kansas who received the merchandise.

When goods or merchandise are delivered to a buyer in Kansas, Kansas sales tax is due even though the buyer

may later transport the property out of Kansas. See page 4 for a discussion of drop shipments.

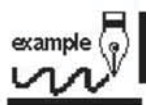
NOTE: If you have established a physical presence or “nexus” in another state, you may be required to register for that state’s sales or use tax. See *What is Nexus?* herein.

COMPENSATING USE TAXES

Sales tax exemption certificates may also be used to claim exemption from compensating use tax. This use tax applies to purchases of goods from businesses in other states and its purpose is to protect Kansas businesses from unfair competition from businesses in other states that may not charge tax. The use tax rate is the same as the state and local sales tax rate in effect where the item is used, stored or consumed. There are two types of use tax: Consumers’ Compensating Use Tax and Retailers’ Compensating Use Tax.

Consumers’ Compensating Use Tax

Consumers’ Compensating Use Tax is due when goods or merchandise are purchased *outside* Kansas for use, storage, or consumption (not resale) *in* Kansas, and a sales tax equal to the state and local sales tax rate in effect where the item is used, stored or consumed, has not been paid. The tax applies whether the item is shipped into Kansas or purchased outside of Kansas and brought back into Kansas. For Kansas businesses, use tax is due when equipment, fixtures and supplies are purchased from another state without tax. An alphabetical listing of all combined state and local tax rates, see our Sales Tax **Jurisdiction Code Booklet (Pub. KS-1700)** for an alphabetical listing of all combined state and local tax rates. Tax rates for specific addresses may be found in the online tax rate locator. Both can be found on our website.



A Topeka Kansas hotel needs to replace its worn out linens and room furniture. The hotel buys them from a Texas company; sales tax is not charged on the invoice. This hotel will owe the compensating use tax rate in effect where the hotel is located (Topeka) on the total delivered price (including shipping, handling, freight or delivery charges) of the linens and furniture.

Retailers’ Compensating Use Tax

Out-of-state retailers collect this use tax on merchandise they deliver or ship to their Kansas customers. Retailers in other states are required to register and collect the Kansas Retailers’ Compensating Use Tax from their Kansas customers if they have a physical presence in Kansas or have established “nexus.”

What is Nexus?

Nexus is defined as a “means of connection” or a “link;” it means you have a business presence for tax purposes. What constitutes nexus varies from situation to situation. Some of the ways that a business may establish nexus in Kansas are listed below.

- Kansas business location, including an office.
- The presence in Kansas of sales or service representatives.

- Operation of mobile stores in Kansas (example: trucks with driver salespersons).
- Stocking inventory in a Kansas warehouse or on consignment.
- Providing tangible personal property for lease or rental in Kansas.
- Delivering merchandise to Kansas customers using company vehicles or contract carriers, rather than interstate common carriers.
- Providing or contracting for installation, repair, construction, or other services in Kansas. (Maintenance contracts require a Kansas retailers’ sales tax registration).

If you are a retailer in another state, and any of the above describes your business activity in Kansas or the activities of your agents, you are required to register and collect the appropriate retailers’ sales or compensating use tax from your Kansas customers.



A Kansas resident orders a personal computer from an Illinois retailer, which is shipped to him from its warehouse in St. Louis. The Illinois retailer also maintains a retail outlet in Kansas. This out-of-state retailer is **required** to collect and remit Kansas retailers’ compensating use tax on this sale.



A Kansas resident orders furniture from a Nebraska retailer. The retailer delivers the furniture to her home in Kansas using its own delivery vehicle. This Nebraska retailer is **required** to register with the Kansas Department of Revenue to collect Kansas Retailers’ Compensating Use tax, since the delivery of the furniture into Kansas with a company vehicle has established nexus.

Similarly, a Kansas retailer may establish “nexus” in another state in these same ways. If any of the nexus activities listed on the previous page describe your business activity in another state, you should contact that state to register to collect the sales/use tax from your customers in those states. If you fail to register in those states, you may become liable for the taxes that were not collected.

Additional information about Kansas use taxes, including sample completed returns for individuals and businesses is in our **Publication KS-1510**, Kansas Sales and Compensating Use Tax. All retailers operating in Kansas should obtain a copy of this publication — available on our website.

USING EXEMPTION CERTIFICATES

On the pages that follow, in alphabetical order, are the exemption certificates currently provided by the Kansas Department of Revenue for the specific exemptions in Kansas sales tax law. The certificates are designed to be reproduced directly from this book or, if you prefer, you may download them from our website.

BEFORE ACCEPTING ANY CERTIFICATE, carefully

read the exemption statement and the accompanying explanation and instructions. Most certificates contain a restatement of the Kansas law (K.S.A. — Kansas Statutes Annotated), or regulation (K.A.R. — Kansas Administrative Regulations) that established the exemption.



IMPORTANT: If your customer or the purchase does not fit the definition or the exempt examples given in the certificate, the sale is most likely not exempt.

COMPLETING THE CERTIFICATE

Follow these three guidelines when completing any exemption certificate.

1) Print or type all information, except for the authorized signature.

The information on the certificate must be legible both to you and to our auditors. Do not print a signature, although it is often helpful to print or type the name below the signature.

2) Fill in all the blanks.

A certificate is complete only when all the requested information is provided. Addresses must include the street or PO box, city, state, and zip code. An

exemption certificate is also not complete unless the customer supplies the appropriate tax account numbers required by the certificate. On the resale exemption certificate, the seller may request a copy of the buyer's sales tax certificate of registration.

3) Give specific descriptions.

Be as precise as possible when describing the property or services purchased. You may use an itemized list, refer to an itemized invoice number, or at the very least provide a general description of the items. When describing a business activity, include the principal product(s) sold or manufactured.

PENALTIES FOR MISUSE

A buyer who issues an exemption certificate in order to unlawfully avoid payment of the sales tax for business or personal gain is guilty of a misdemeanor, and upon conviction may be fined up to \$1,000 or imprisoned for up to a year, or both. When a buyer is found to have used a Resale Exemption Certificate to avoid payment of the tax, the director may also increase any penalty due on the tax by \$250 or 10 times the tax due, whichever is greater, for each transaction where the misuse of a resale exemption certificate occurred. [K.S.A. 79-3651(g)]