

Agency 92
Kansas Department of Revenue

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Article 1.—HEARING

92-1-1. (Authorized by and implementing K.S.A. 75-5103; effective Jan. 1, 1966; amended May 1, 1988; revoked March 29, 2002.)

92-1-2. (Authorized by and implementing K.S.A. 75-5103; effective Jan. 1, 1966; amended Jan. 1, 1967; amended May 1, 1988; revoked March 29, 2002.)

92-1-3. (Authorized by and implementing K.S.A. 75-5103; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Feb. 15, 1977; amended May 1, 1988; revoked March 29, 2002.)

92-1-4. (Authorized by K.S.A. 74-2437, 74-2438; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked May 1, 1988.)

92-1-5. (Authorized by K.S.A. 74-2437, 74-2438; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked May 1, 1988.)

92-1-6. (Authorized by K.S.A. 74-2437, 74-2438; effective Jan. 1, 1966; revoked May 1, 1988.)

92-1-7. (Authorized by K.S.A. 74-2437, 74-2438; effective Jan. 1, 1966; revoked May 1, 1988.)

92-1-8. (Authorized by K.S.A. 74-2437, 74-2438; effective Jan. 1, 1966; revoked May 1, 1988.)

Article 2.—INHERITANCE TAXES

92-2-1 and 92-2-2. (Authorized by K.S.A. 74-2437, 79-1511; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-3. (Authorized by K.S.A. 74-2437, 79-1512, 79-1519, K.S.A. 1973 Supp. 59-1413, 79-1511; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-4 and 92-2-5. (Authorized by K.S.A. 59-1405, 74-2437, 79-1511, 79-1512, 79-1517, 79-1519; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-6. (Authorized by K.S.A. 74-2437, 79-1512, 79-1517, 79-1519, K.S.A. 1973 Supp. 59-1405, 79-1511; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-7. (Authorized by K.S.A. 74-2437, 79-

1501a, 79-1501d, 79-1502, 79-1511, 79-1512, 79-1517; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-8. (Authorized by K.S.A. 74-2437, 74-2443, 79-1501; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1978.)

92-2-9. (Authorized by K.S.A. 74-2437, 79-1501; effective Jan. 1, 1966; amended Jan. 1, 1969; amended May 1, 1978; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-10. (Authorized by K.S.A. 74-2437, 79-1501; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-11. (Authorized by K.S.A. 74-2437, 79-1502; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-12 and 92-2-13. (Authorized by K.S.A. 74-2437, 79-1502, 79-1518, 79-1526; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-14. (Authorized by K.S.A. 74-2437, 79-1501, 79-1502, 79-1504, 79-1506, 79-1507, 79-1508, 79-1509, 79-1515, 79-1522; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-15 and 92-2-16. (Authorized by K.S.A. 74-2437, 79-1501, 79-1512; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-17. (Authorized by K.S.A. 59-2250, 59-2251, 74-2437, 79-1501, 79-1512; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-18 to 92-2-37. (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501, 79-1501a, 79-1501d, 79-1501e, 79-1512, 79-1517; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-38. (Authorized by K.S.A. 74-2437, 79-1501, 79-1513, 79-1514; effective Jan. 1, 1966; revoked May 1, 1978.)

92-2-39 to 92-2-41. (Authorized by K.S.A. 74-2437, 79-1501, 79-1534, 79-2401; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

92-2-42. (Authorized by K.S.A. 1979 Supp.

79-1583, 79-1546; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

92-2-43. (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1543; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

92-2-44. (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1545; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

92-2-45. (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1547, 79-1552, 79-1556; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

92-2-46. (Authorized by K.S.A. 1980 Supp. 79-1537, 79-1546, 79-1583; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked, E-81-16, June 25, 1980; revoked May 1, 1981.)

92-2-47. (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1537; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

92-2-48. (Authorized by K.S.A. 1980 Supp. 79-1537, 79-1583; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked, E-81-16, June 25, 1980; revoked May 1, 1981.)

92-2-49. (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1561; effective, E-80-26, Dec. 26, 1979; effective May 1, 1980; revoked May 1, 1986.)

92-2-50. (Authorized by K.S.A. 59-1405, K.S.A. 1979 Supp. 79-1583, 79-1560, 79-1561; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

92-2-51. (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1563; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

92-2-52. (Authorized by K.S.A. 1979 Supp. 79-1539, 79-1540, 79-1583; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1983.)

92-2-53. (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1563; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

92-2-54. Transfer of assets prior to payment of tax. When it becomes necessary to transfer assets prior to payment of the inheritance tax, a consent to transfer can be obtained in those cases where the inheritance tax lien is not released automatically pursuant to K.S.A. 1979 Supp. 79-1569. A consent to transfer any property is not necessary where the sale is properly authorized by the decedent's will or by order of the district court. A request for consent to transfer shall be made by filing a completed form IH-14.

A consent to transfer assets will not be issued prior to the receipt of a return. If a complete return can not be filed at the time the transfer becomes necessary, a preliminary return shall be filed. A preliminary return shall be as complete as is possible, and shall include an explanation of the reason for the inability to file a complete return. A preliminary return must also include copies of the decedent's will and any trust instruments involved. A consent to transfer will be issued when the return describes remaining real estate or stock of a value sufficient to secure payment of the inheritance tax. When there is no real estate or stock to secure payment of the tax, a consent to transfer may be obtained by one of the three (3) following methods: (a) The executor, administrator, or deemed executor may file an affidavit describing other assets of a value sufficient to secure payment of the inheritance tax, and warranting that those assets will not be disposed of until a complete return has been filed and the tax determined and paid.

(b) The executor, administrator or deemed executor may establish an escrow account in an amount the director finds to be sufficient to secure payment of the inheritance tax. The escrow shall provide that the account shall not be released to the executor, administrator or deemed executor until the complete inheritance tax return has been filed and the tax determined and paid.

(c) The executor, administrator or deemed executor may establish a joint account with the director in an amount the director finds to be sufficient to secure payment of the inheritance tax. The joint account shall not be released to the executor, administrator or deemed executor until the complete inheritance tax return has been filed and the tax determined and paid. (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1569; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980.)

92-2-55. (Authorized by K.S.A. 1979 Supp.

79-1546, 79-1547, 79-1552, 79-1556, 79-1561, 79-1583; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1983.)

92-2-56. Family settlement agreements.

To be effective for purposes of estate distribution and inheritance tax liability determinations, a family settlement agreement shall be properly executed and presented to a court of competent jurisdiction for its approval, pursuant to K.S.A. 59-618a, and its amendments. The copy of the agreement filed with the Department of Revenue shall indicate that it has been so presented. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1537; effective May 1, 1986.)

92-2-57. Distributees; prior transfers between class A distributees. (a) Any person or entity acquiring an interest in property as a result of a decedent's death shall be a distributee of such decedent's estate.

(b) When more than one individual dies as a result of a common disaster, and it cannot be determined whether one survived the other or others, problems concerning title to property or the devolution thereof shall be resolved under the provisions of the Kansas uniform simultaneous death law, K.S.A. 58-701 to 58-707, and its amendments. The Kansas inheritance tax shall apply to the property of each decedent as so determined.

(c) When a person is taxed as a class A distributee upon receipt of property from a decedent's estate, and that person dies within five years of the date of death of the first decedent, the same property may pass partially exempt to a person who is a class A distributee of the second decedent. The portion of the value which is exempt upon the death of the second decedent shall be that portion which was actually taxed upon the death of the first decedent. The tax contemplated in determining the extent to which property was taxed and the tax thereon paid in the estate of the first decedent shall be the inheritance tax imposed by K.S.A. 79-1537, and its amendments. The portion of the value which was not taxed upon the death of the first decedent, because of the personal deduction of the distributee or for any other reason, shall be included as a part of the taxable estate of the second decedent. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1537; effective May 1, 1986.)

92-2-58. Debts forgiven by will. The dis-

charge or bequest, in a will, of any debt or demand of a testator against any person shall be construed as a specific bequest of the debt or demand. The amount thereof shall be included in the inventory of the assets of the decedent. The amount of the indebtedness shall be set over to the debtor the same as any other specific bequest, included in the debtor's distributable share, and subjected to tax. Notes or other evidences of debt which are forgiven by provision made in any will and which are otherwise barred from collection by operation of law shall be exempt from Kansas inheritance tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1537a; effective May 1, 1986.)

92-2-59. Surviving spouses. (a) Only a person decreed to have been a common law spouse by a court of competent jurisdiction shall be given the same status as a spouse by marriage for inheritance tax purposes.

(b) Any property interest passing to the surviving spouse of a decedent shall be exempt from Kansas inheritance tax, regardless of the manner in which the interest is held or passed.

(c) If the tax for an estate is determined under the provisions of K.S.A. 79-1539 or 79-1540, and its amendments, the share passing to the surviving spouse shall be chargeable with the tax in proportion to the amount of the share of the estate received by the surviving spouse. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1537b, 79-1539, 79-1540; effective May 1, 1986.)

92-2-60. Charitable distributees. (a) Any property interest passing from the decedent to a charitable organization shall be exempt from Kansas inheritance tax, regardless of the manner in which the interest is held or passed.

(b) If the tax due for an estate is determined under the provisions of K.S.A. 79-1539 or 79-1540 and its amendments, the share passing to a charitable organization shall be chargeable with the tax when there are no other distributees whose distributive shares are large enough to pay the tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1537c, 79-1539, 79-1540; effective May 1, 1986.)

92-2-61. Qualified terminable interest property election. (a) A qualified terminable interest property election shall be made on form IH 80, Kansas inheritance tax return for estates filing federal estate tax returns, or form IH 90, Kansas inheritance tax return for estates not filing federal

estate tax returns, and by attaching or including information sufficient to identify the particular assets or groups of assets subject to the election. A qualified terminable interest property election may be made without regard to the filing of, or making of a similar election on, a federal estate tax return. The election shall be irrevocable once it is made.

(b) Elections, including less than all qualified property, shall be allowed. If a partial election is made, a computation schedule or other information sufficient to identify the particular assets or groups of assets subject to the partial election shall be included. If identification of particular assets is not possible, the dollar amount, or percentage, of all assets subject to the election shall be indicated. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1537d; effective May 1, 1986.)

92-2-62. Tax to residue. When a will or other written instrument specifically provides for the payment of inheritance tax from the residue of the decedent's estate, the tax due on property which is not a part of the residue of the estate, shall be deducted from the residue before it is distributed and taxed. Tax due on the balance of the residue shall not be deducted from the residue in making distribution and calculating tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1538; effective May 1, 1986.)

92-2-63. Additional tax; credit for state death taxes. If the Kansas inheritance tax, computed in accordance with K.S.A. 79-1537, and its amendments, is less than an amount equal to the federal credit for state death taxes, the difference between the inheritance tax and the amount of the federal credit shall be due as an additional tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1539; effective May 1, 1986.)

92-2-64. Minimum tax; credit for state death taxes. If no Kansas inheritance tax is due upon the distributive shares of an estate under K.S.A. 79-1537, and its amendments, an amount equal to the federal credit for state death taxes shall be due as a minimum tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1540; effective May 1, 1986.)

92-2-65. Proration of credit for state death taxes; tax chargeable against distributee's interests. (a) When an estate is comprised of property both within and without the Kansas jurisdiction, the amount of the credit for state

death taxes shall be prorated between the jurisdictions, based upon the relationship between the value of the gross estate within the Kansas jurisdiction and the value of the federal gross estate.

(b) The tax imposed pursuant to K.S.A. 79-1539 or 79-1540, and its amendments, shall be chargeable against the interests of each distributee in proportion to the amount of the shares of the estate received by each. Even though no tax may be due on a distributable share pursuant to K.S.A. 79-1537, and its amendments, the distributee shall pay a portion of the tax. A charitable beneficiary shall be required to pay a proportionate part of the tax only when there is no other beneficiary whose distributive share is large enough to pay the tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1541; effective May 1, 1986.)

92-2-66. Valuation of property included in the gross estate. (a) The property included in a decedent's gross estate pursuant to K.S.A. 79-1547 through 79-1557, and their amendments, shall be valued as follows:

(1) Stocks and Bonds. The value of stocks and bonds shall be the fair market value per share or bond on the applicable valuation date. Treasury Reg. Sec. 20.2031-2 (1976) is hereby adopted by reference and shall be followed in determining the fair market value of stocks and bonds.

(2) Business interests. The value of any interest of a decedent in a business, whether a partnership or a proprietorship, shall be the fair market value of that interest on the applicable valuation date. Treasury Reg. Sec. 20.2031-3 (1958) is hereby adopted by reference and shall be followed in determining the fair market value of these business interests.

(3) Notes. Notes owned by the decedent shall be valued at their fair market value on the applicable valuation date. Treasury Reg. Sec. 20.2031-4 (1958) is hereby adopted by reference and shall be followed in determining the fair market value of notes.

(4) Cash. The amount of cash belonging to the decedent at the date of death, whether in the decedent's possession or deposited with a bank, shall be included in the decedent's gross estate. Treasury Reg. 20.2031-5 (1958) is hereby adopted by reference and shall be followed in determining the valuation of cash on hand or on deposit.

(5) Household items and personal effects. The value of household items and personal effects

shall be the fair market value of those items on the applicable valuation date. Treasury Reg. Sec. 20.2031-6 (1958) is hereby adopted by reference and shall be followed in determining the fair market value of household items and personal effects.

(6) Life insurance and annuity contracts. The valuation of certain life insurance contracts on the life of another individual, certain annuity contracts and shares in an open-end investment company shall be determined under Treasury Reg. Sec. 20.2031-8 (1974), which is hereby adopted by reference.

(7) Interests affected by lapse of time; estates of decedents dying after December 31, 1978 and before May 1, 1986. Annuities, life estates, terms for years, remainders and reversions shall be valued in the manner and according to the tables provided in Treasury Reg. Sec. 20.2031-10 (1970), which is hereby adopted by reference.

(8) Interests affected by lapse of time; estates of decedents dying after April 30, 1986. Annuities, life estates, terms for years, remainders and reversions shall be valued in the manner and according to the tables provided in Treasury Reg. Sec. 20.2031-7 (1984), which is hereby adopted by reference.

(9) Other property. The valuation of any property not specifically described in the preceding subsections of this regulation shall be determined in accordance with the general principles set forth in Treasury Reg. Sec. 20.2031-9 (1958) and Treasury Reg. Sec. 20.2031-1 (1965), which are hereby adopted by reference.

(b) In the event the alternate valuation method is elected for federal estate tax purposes pursuant to 26 U.S.C. Sec. 2032, the alternate valuation method shall also be used for Kansas inheritance tax purposes, as provided in K.S.A. 79-1543, and its amendments. If a federal estate tax return is filed and the alternate valuation method is not elected, the Kansas alternate valuation method shall not be used. If a federal estate tax return is not filed, the estate may be valued for Kansas inheritance tax purposes as of the date of death or under the alternate valuation method provided in K.S.A. 79-1543, and its amendments. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1543, 79-1546 to 79-1557; effective May 1, 1986.)

92-2-67. Special valuation of certain farm and closely held business properties. (a) An election under K.S.A. 79-1545, and its amendments, shall be made on a timely filed form IH

80, Kansas inheritance tax return for estates filing federal estate tax returns, and by attaching to it a notice of election and an agreement to special valuation by persons with an interest in the property. The notice of election and agreement to special valuation shall be made in accordance with the form and informational content requirements set forth in Treasury Reg. Sec. 20.2032A-8 (1980), which is hereby adopted by reference. The special use valuation method provided by K.S.A. 79-1545, and its amendments, may be elected only when the special use valuation method is elected for federal estate tax purposes pursuant to 26 U.S.C. Sec. 2032A. The election shall be irrevocable once it is made. If a federal estate tax return is not filed, or if a federal estate tax return is filed but the special use valuation method is not elected, the Kansas special use valuation method shall not be used. The special valuation method provided by K.S.A. 79-1545, and its amendments, may not be elected if a qualified real property exclusion election has been made with respect to the estate under K.S.A. 79-1545b, and its amendments.

(b) A protective election to specially value qualified real property may be made only when a protective election to specially value qualified real property is made for federal estate tax purposes. A protective election may be made on a timely filed form IH 80, and by attaching to it a copy of the protective election to specially value qualified real property made for federal estate tax purposes.

(c) Requirements of material participation for valuation of certain farm and closely held business real property shall be determined in accordance with the general principles set forth in Treasury Reg. Sec. 20.2032A-3 (1980), which is hereby adopted by reference.

(d) The method of valuing farm real property shall be determined in accordance with the general principles set forth in Treasury Reg. Sec. 20.2032A-4 (1980), which is hereby adopted by reference.

(e) Within 90 days of the receipt of: (1) any line adjustment by the internal revenue service, or (2) a federal closing letter, the representative of the estate shall submit to the director of taxation a true copy of the line adjustments and computation of tax as adjusted, or the closing letter. Failure to comply shall result in the accrual of interest on the amount of any underpayment of tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1545, as amended by L. 1985, Ch. 316, Sec. 1; effective May 1, 1986.)

92-2-68. Exclusion of certain farm and closely held business properties from gross estate.

(a) An election under K.S.A. 79-1545b, and its amendments, shall be made on a timely filed form IH 80, Kansas inheritance tax return for estates filing federal estate tax returns, or form IH 90, Kansas inheritance tax return for estates not filing federal estate tax returns, and by attaching to it a notice of election and an agreement to special valuation by persons with an interest in the property. The notice of election and agreement to special valuation shall be made in accordance with the general principles relating to form and informational content requirements set forth in Treasury Reg. Sec. 20.2032A-8 (1980), which is hereby adopted by reference. The qualified real property exclusion method provided by K.S.A. 79-1545b, and its amendments, may be elected without regard to the filing of, or special use valuation election made on, a federal estate tax return. The election shall be irrevocable once it is made. The qualified real property exclusion method provided by K.S.A. 79-1545b, and its amendments, shall not be elected if a special use valuation election has been made with respect to such estate under K.S.A. 79-1545, and its amendments.

(b) A protective election to exclude qualified real property may be made only when a federal estate tax return is filed and a protective election to specially value qualified real property is made for federal estate tax purposes. A protective election may be made on a timely filed form IH 80, and by attaching to it a copy of the protective election to specially value qualified real property made for federal estate tax purposes.

(c) Requirements of material participation for the exclusion of certain farm and closely held business real property shall be determined in accordance with the general principles set forth in Treasury Reg. Sec. 20.2032A-3 (1980), which is hereby adopted by reference.

(d) Within 90 days of the receipt of (1) any line adjustment by the internal revenue service, or (2) a federal closing letter, the representative of the estate shall submit to the director of taxation a true copy of the line adjustments and computation of tax as adjusted, or the closing letter. Failure to comply shall result in the accrual of interest on the amount of any underpayment of tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1545b, as amended by L. 1985, Ch. 316, Sec. 2; effective May 1, 1986.)

92-2-69. Transfers in contemplation of death.

(a) Estates of decedents dying prior to January 1, 1983, shall include all property which the decedent transferred within one year prior to death, except property transferred pursuant to a bona fide sale for an adequate and full consideration in money or money's worth.

(b) Estates of decedents dying after December 31, 1982, shall include property which the decedent transferred within one year prior to death, except property transferred pursuant to a bona fide sale for an adequate and full consideration in money or money's worth, only when the donor retains control over the asset transferred, or when one or more items of property transferred to any transferee has an aggregate value of more than \$10,000. The gross estate of a decedent dying after December 31, 1982, shall not include the value of any one or more lifetime gifts aggregating less than \$10,000 of value nor the first \$10,000 of one or more gifts of more than \$10,000 of value where the decedent had made an absolute gift and had not retained any incidents of control or ownership. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1549; effective May 1, 1986.)

92-2-70. Transfers with retained life estate.

The determination of what property is to be included in a decedent's gross estate, as a transfer with a retained life estate, and its value, shall be made in accordance with the general principles set forth in Treasury Reg. Sec. 20.2036-1 (1960), which is hereby adopted by reference. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1550; effective May 1, 1986.)

92-2-71. Transfers taking effect at death.

The determination of what property is to be included in a decedent's gross estate, as a transfer taking effect at death, and its value, shall be made in accordance with Treasury Reg. Sec. 20.2037-1 (1958), which is hereby adopted by reference. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1551; effective May 1, 1986.)

92-2-72. Revocable transfers.

The determination of what is to be included in a decedent's gross estate as a revocable transfer, and its value, shall be made in accordance with Treasury Reg. Sec. 20.2038-1 (1962), which is hereby adopted by reference. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1552; effective May 1, 1986.)

92-2-73. Annuities or other payments

receivable by reason of surviving decedent.

The determination of what is to be included in a decedent's gross estate as an annuity, and its value, shall be made in accordance with the general principles set forth in Treasury Reg. Sec. 20.2039-1 (1976), Treasury Reg. Sec. 20.2039-2 (1981), Treasury Reg. Sec. 20.2039-4 (1984), and Treasury Reg. Sec. 20.2039-5 (1981), which are hereby adopted by reference. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1553; effective May 1, 1986.)

92-2-74. Joint tenancy. (a) For the estates of decedents dying after December 31, 1981, any interest in property held by the decedent and the decedent's spouse as joint tenants with right of survivorship shall be included in the gross estate only to the extent of one-half of the value of the joint interest.

(b) If the joint tenants are not spouses, or if the spouses are not the only joint tenants, or if the decedent's death occurred prior to January 1, 1982, the entire value of the interest shall be included in the estate of the decedent, except the part that may be shown to have originally belonged to a joint tenant other than the decedent and never to have been received or acquired from the decedent for less than adequate and full consideration. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1554; effective May 1, 1986.)

92-2-75. Powers of appointment. The determination of what is to be included in a decedent's gross estate as a power of appointment, and its value, shall be made in accordance with Treasury Reg. Sec. 20.2041-1 (1961), Treasury Reg. Sec. 20.2041-2 (1958), and Treasury Reg. Sec. 20.2041-3 (1958), which are hereby adopted by reference. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1555; effective May 1, 1986.)

92-2-76. Life insurance proceeds. (a) The determination of what life insurance proceeds are to be included in a decedent's gross estate shall be made in accordance with Treasury Reg. Sec. 20.2042-1 (1974), which is hereby adopted by reference.

(b) Credit life insurance shall be considered to be paid to the decedent's estate rather than a named beneficiary. The amount of the credit life insurance shall not be allowed as an adjustment to the Kansas gross estate. (Authorized by K.S.A.

79-1583; implementing K.S.A. 79-1556; effective May 1, 1986.)

92-2-77. Transfers for insufficient consideration. The determination of what is to be included in a decedent's estate as a transfer for insufficient consideration, and its value, shall be made in accordance with the general principles set forth in Treasury Reg. Sec. 20.2043-1 (1958), which is hereby adopted by reference. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1557; effective May 1, 1986.)

92-2-78. Proration of deductions. (a) When the assets of an estate are both within and without the jurisdiction of Kansas, the deduction for expenses and debts shall be prorated in the ratio that Kansas assets subject to debts bear to the entire estate subject to debts. For purposes of computing this ratio, assets which are specifically bequeathed or devised shall not be considered to be subject to debts unless the value of all assets which are not specifically bequeathed or devised is insufficient to pay all claims and debts.

(b) When an estate owns property both within and without the jurisdiction of Kansas and federal estate tax is levied upon the estate, or where the state of Kansas does not include all assets subject to federal estate tax for computation of inheritance taxes, the federal estate tax shall be allowed as a deduction in computing Kansas inheritance taxes in the ratio that assets subject to tax by Kansas bear to the gross valuation includible for federal estate tax purposes. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1560; effective May 1, 1986.)

92-2-79. Deduction of expenses and debts. (a) The determination of the deductibility of funeral expenses and administration expenses against the estate under K.S.A. 79-1561 shall be made in accordance with Treasury Reg. Sec. 20.2053-1 (1972), Treasury Reg. Sec. 20.2053-2 (1958) and Treasury Reg. Sec. 20.2053-3 (1979), which are hereby adopted by reference.

(b) Any claim or debt against a decedent's estate which accrued prior to the death of the decedent shall be deductible from the gross estate for inheritance tax purposes when allowed by the district court in probated estates. In the case of a non-probated estate, the director of taxation may examine and disallow any claims which are not legal and legitimate obligations of the estate. The determination of what claims and debts are allow-

able shall be made in accordance with the general principles set forth in Treasury Reg. Sec. 20.2053-4 through Sec. 20.2053-6 (1958), Treasury Reg. Sec. 20.2053-7 (1963) and Treasury Reg. Sec. 20.2053-8 (1958), which are hereby adopted by reference.

(c) The total amount of claims and debts allowable under subsection (b) shall be deducted from the adjusted gross estate in computing the amount of the distributable estate. Unless otherwise provided by the decedent's will, the portion of each distributee's share which is considered to be offset by claims and debts, and therefore not subject to inheritance tax, shall be dependent upon the type of conveyance by which the distributees receive their shares. For inheritance tax purposes, conveyances shall be offset by claims and debts in the order specified by K.S.A. 59-1405, and its amendments. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1561; effective May 1, 1986.)

92-2-80. Expense deductions not allowable as deductions for income tax purposes.

(a) Expenses which have been, or will be, deducted for inheritance tax purposes shall not be deducted for income tax purposes. To deduct an item for income tax purposes, there shall be attached to a timely filed inheritance tax return a schedule or information setting forth the nature and amount of the deduction, a statement that the amounts have not been allowed as deductions under K.S.A. 79-1559(d) and (e) or K.S.A. 79-1561, and its amendments, and a waiver of the right to have the amounts allowed at any time as deductions under K.S.A. 79-1559(d) and (e) or K.S.A. 79-1561, and its amendments. The waiver shall be irrevocable once it is made.

(b) The manner in which expenses are deducted at the federal level shall not determine the manner of deductions for Kansas. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1562; effective May 1, 1986.)

92-2-81. Deductions for federal estate tax. The amount of federal estate tax which will be allowed as a deduction for inheritance tax purposes shall be limited to the extent that the tax is imposed upon assets deemed to be included in the decedent's estate as of the date of death as defined by Kansas law. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1563; effective May 1, 1986.)

92-2-82. Filing of return; payment of

tax; liens; interest; computations by director.

(a) A complete return shall be filed within nine months after the date of the decedent's death to avoid the accrual of interest. When the filing of the return is delayed beyond nine months after the death of the decedent, and the director finds that such delay was due to the inability of the personal representative to determine that distributive shares of an estate or its proper recipients, or to litigation, interest shall commence at the time the problem resulting in the delay is resolved. A return shall be deemed to have been filed upon delivery to the inheritance tax section of the Kansas department of revenue. Returns mailed to the department shall be deemed to have been filed as of the postmark date.

(b) (1) A return shall disclose all information and be accompanied by any supplemental documents necessary for the determination of the tax liability. The following documents shall be submitted where applicable: (A) A certified copy of the will and codicils;

(B) a certified family settlement agreement;

(C) trust instruments and their amendments;

(D) ante nuptial or post nuptial agreements;

(E) an affidavit for proof of relationship of a stepchild or stepparent or an adopted child;

(F) the following proof of contribution, where available: (i) Copies of cancelled checks from an identifiable account;

(ii) an affidavit from a disinterested third party having knowledge of the decedent's and surviving joint tenant's financial affairs and who can trace the source of funds;

(iii) an affidavit from the seller of real estate to the decedent if the seller knows the source of funds used to acquire the real estate;

(iv) an affidavit from a banker knowing how funds in certain accounts were acquired; and

(v) copies of the decedent's and surviving joint tenant's income tax returns;

(F) a schedule of the computation and method used if the election is made to use a qualified real property exclusion;

(G) a schedule of the computation and method used when necessary to explain the values listed on any schedule;

(H) an explanation of any loss incurred during the settlement of the estate arising from fires, storms, shipwrecks or other casualties, or from theft, not compensated by insurance. The property on which the loss was incurred is required to be identified;

(I) a separate schedule showing the computation of the net non-Kansas property and the net non-Kansas shares;

(J) a certified copy of any disclaimer filed;

(K) an explanation or the statutory citation creating an exemption applicable to assets of the estate;

(L) appropriate fees for waivers, copies, etc; and

(M) a copy of the return filed in the state of domicile if the decedent was a nonresident of Kansas and owned real property situated in Kansas or tangible personal property with a Kansas situs, or both.

(2) In all estates in which a federal estate tax return shall be made or required, the representative of the estate shall furnish the director of taxation, in addition to all other information required to be filed, true copies of the entire federal estate tax return showing recapitulation of assets and computation of the taxes. If only a portion of the federal estate tax return is required to be filed, and the schedules are not prepared, information necessary to identify the individual assets and expenses of the decedent's estate which are normally contained in the schedules shall be submitted to the inheritance tax section. Where an election is made to have the director compute the tax, failure to supply all information necessary for the determination of the tax liability shall result in the accrual of interest from the due date of the return.

(3) Within 90 days of the conclusion of litigation, the representative of the estate shall submit to the director of taxation true copies of any court order affecting the composition or distribution of the estate. Failure to comply shall result in the accrual of interest.

(4) If tax is paid with a return which does not disclose all information necessary for the determination of the tax liability, and subsequent receipt of this information results in additional tax liability, interest shall accrue upon the additional liability from the due date of the return.

(c) All property of which a decedent dies seized or possessed, in any form of investment, shall be charged with a general lien for all taxes and interest thereon which are or may become due on such property. The personal representative shall have a right to proceed against the property or interests passing to a distributee or against property or interests held by the distributee in the distributee's own right, in the following cases:

(1) If the personal representative has received an approved stay of payment of the balance of the taxes from the director, the personal representative shall have a right to proceed against each individual distributee receiving a share not within the custody or control of the personal representative. To enforce this right to proceed, the personal representative shall perfect a lien.

(2) If the personal representative pays the taxes due on shares not within the personal representative's custody and control, the personal representative shall have a right to proceed against the one or more individual distributees receiving such shares. To enforce this right, a lien shall be perfected. The right to proceed against an individual distributee arises only after issuance of a receipt for taxes. All associated forms and notices shall be prepared and issued by the inheritance tax section following a review of the specific situation.

(d) When it appears the filing of a return cannot be completed within nine months of the decedent's death, the personal representative of the estate, prior to the due date of the return, may request an extension of time to file the return. A request for an extension of time to file shall be made in writing, set forth the fact situation which makes timely filing impossible or unreasonably difficult, state the grounds upon which the extension should be allowed, and specify the time of extension or the extended due date requested.

(e) At the election of the personal representative, the taxes imposed may be determined by the director. The election shall be made by filing a return disclosing all information necessary for the determination of the taxes imposed. Upon receipt of all necessary information, the director shall determine the taxes due and owing and shall notify the personal representative of the tax liability by registered or certified mail. Notwithstanding any election made pursuant to this section, the taxes shall be due and payable at the same time and in the same manner as if the taxes had been determined by the personal representative. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1564; effective May 1, 1986.)

92-2-83. Reporting adjustments of internal revenue service. The representative of an estate shall notify the department of adjustments made by the internal revenue service pursuant to K.S.A. 79-1574, and its amendments, by submitting true copies of the line adjustments and of the adjusted computation of tax. (Authorized

by K.S.A. 79-1583; implementing K.S.A. 79-1574; effective May 1, 1986.)

92-2-84. Overpayment of fees. A fee which is overpaid shall not be refunded unless a written request for the refund is made by the party making the original payment. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1580; effective May 1, 1986.)

Article 3.—MOTOR FUEL TAX AND TRANSPORTATION OF LIQUID FUEL

92-3-1 to 92-3-3. (Authorized by K.S.A. 55-512, 55-514, 66-1304; effective Jan. 1, 1966; revoked, E-80-2, Jan. 18, 1979; revoked May 1, 1979.)

92-3-4. Export fuels; exemption claims. Any distributor claiming a tax exemption on the sale or delivery of motor fuel for export shall file a monthly distributor's report, supported by a copy of the manifest or sales ticket, signed by the shipper. The distributor shall keep a copy of the manifest or sales ticket. The person receiving the fuel shall verify on the manifest or sales ticket that the fuel has been received. (Authorized by K.S.A. 79-3419; implementing K.S.A. 79-3408, as amended by L. 1985, Ch. 328, Sec. 1; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1980; amended May 1, 1986.)

92-3-5. (Authorized by K.S.A. 55-508, 55-512; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-3-6. Marking of vehicles transporting liquid fuels. Each vehicle used in transporting liquid fuel, which is subject to the law pertaining to the transportation of liquid fuel, shall be marked or lettered as follows: (a) The liquid fuel carrier's name and address shall appear in plain letters not less than two inches in height on a sharply contrasting background on each side of the vehicle.

(b) The liquid fuel carrier's license certification number shall appear in plain letters not less than two inches in height on a sharply contrasting background on each side of the vehicle. (Authorized by and implementing K.S.A. 55-512; effective Jan. 1, 1966; amended May 1, 1979; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982; amended May 1, 1986.)

92-3-7. Vehicles; separate delivery apparatus for each compartment; exception.

Every vehicle used in transporting liquid fuel by means of the public highways of this state shall have for each compartment separate dispensing apparatus for the delivery of such liquid fuel: *Provided, however,* That this rule shall not apply to vehicles transporting the same kind of liquid fuel in all compartments thereof. (Authorized by K.S.A. 66-1304, K.S.A. 1965 Supp. 55-512; effective Jan. 1, 1966.)

92-3-8. (Authorized by K.S.A. 55-512, 66-1304; effective Jan. 1, 1966; revoked, E-80-2, Jan. 18, 1979; revoked May 1, 1979.)

92-3-9. (Authorized by K.S.A. 66-1304, 79-3416, K.S.A. 1965 Supp. 55-512; effective Jan. 1, 1966; revoked May 1, 1986.)

92-3-9a. Delivery to one other than original consignee. (a) Subject to the provisions of K.S.A. 79-3416, if delivery of liquid fuels or motor fuels is made to some one other than the original consignee, the manifest shall legibly state: (1) the name and address of the original consignee;

(2) the name and address of the actual consignee;

(3) the license number of the actual consignee; and

(4) the quantity of fuel (corrected to 60 degrees Fahrenheit) received by the actual consignee.

(b) The person receiving the fuel shall verify on the manifest or sales ticket that the fuel has been received. (Authorized by K.S.A. 79-3419; implementing K.S.A. 79-3416; effective May 1, 1986.)

92-3-10. Measuring vehicle tanks; vehicles affected; capacity marker; extent filled.

All vehicles transporting motor-vehicle fuel by means of the public highways of this state used as an original container in importing motor-vehicle fuel into this state, or transportation from a refinery, place of manufacture or production, or pipeline terminal, shall have welded or permanently and immovably affixed in some other manner, in each compartment thereof a capacity marker or indicator. No person shall fill any compartment to a point above the level of such capacity marker or indicator. Such capacity marker or indicator shall be placed to comply with the state fire marshal's regulation covering outage. (Authorized by K.S.A. 83-125, K.S.A. 1965 Supp. 55-512; effective Jan. 1, 1966.)

92-3-11. Vehicle tanks; marking capacity; identifying tank; certificate; basis of tax payments. All vehicles transporting motor-vehicle fuel by means of the public highways of this state, used as an original container in transportation from a refinery, place of manufacture or production, or pipeline terminal in this state shall be submitted for calibrating and measuring the capacity of such vehicle tank and compartments thereof. Any other vehicle transporting liquid fuel by means of the public highways of this state shall be submitted for calibrating and measuring in accordance herewith when requested by the director of revenue or his authorized representative. Upon finding the capacity of such vehicle tank and compartments thereof, the director or his authorized representative shall cut with a die on the dome of each compartment of the vehicle tank, figures indicating the total gallon capacity thereof when filled to capacity marker or indicator. Such unit shall also be assigned an identifying number which shall be cut with die on the rear of the vehicle tank near the top. There shall also be issued for such vehicle, a certificate on a form prepared by the director, indicating the identifying number of such vehicle tank unit, the number of each compartment, numbered consecutively from front to rear of vehicle tank, the capacity of each compartment and the distance of the dome top level above the capacity marker or indicator. Such certificate shall at all times be carried by the person in charge of such vehicle tank and submitted for inspection on demand of the director or his representatives. After the issuance of such certificate, all transactions and tax payments shall be made on the basis of the gallon capacity as certified: *Provided, however,* That in the case of a refinery, place of manufacture or production, or pipeline terminal which is equipped with a meter or meters, the director of revenue may approve the use of such meter or meters as a basis of transactions and tax payments if such meter or meters are approved by him. (Authorized by K.S.A. 83-125, K.S.A. 1965 Supp. 55-512; effective Jan. 1, 1966.)

92-3-12. (Authorized by K.S.A. 83-125, K.S.A. 1965 Supp. 55-512; effective Jan. 1, 1966; revoked May 1, 1986.)

92-3-12a. Vehicle tanks; re-marking when damaged. If a vehicle tank, shell or head, seal, marker rod or indicator disc is damaged or altered in any manner after it has been calibrated,

the owner or lessee shall report the damage or alteration to the director. The director may remark calibrations to indicate accurate measurements or calibrations. Motor fuel shall not be loaded into a damaged or altered vehicle tank until after the vehicle tank or the vehicle tank's components have been re-marked by the director to indicate accurate measurement. (Authorized by and implementing K.S.A. 55-512; effective May 1, 1986.)

92-3-13. (Authorized by K.S.A. 83-125, K.S.A. 1965 Supp. 55-512; effective Jan. 1, 1966; revoked May 1, 1986.)

92-3-14. Calibration unit number. Each tank vehicle calibrated shall have the unit number appear in plain letters not less than two inches in height on a sharply contrasting background on each side of the tank portion of the vehicle and shall be identified as "unit No. _____." (a) When a change of ownership of tank vehicle occurs, the seller shall return the certification card to the director of taxation. The new owner shall present the tank vehicle to the state calibration agent for inspection and registration within 30 days of the change in ownership. A fee shall not be charged to a new owner unless recalibration of the tank vehicle is necessary.

(b) All tank vehicles shall be inspected by the state calibration agent not less than once each five years and recalibrated at least once every 10 years. (Authorized by K.S.A. 55-512; implementing L. 1985, Ch. 345, Sec. 1; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

92-3-15. (Authorized by K.S.A. 79-3430, 79-3458; effective Jan. 1, 1966; revoked May 1, 1986.)

92-3-16. Books and records; preservation. (a) Persons claiming refunds of motor fuel tax because the fuel was used for nonhighway purposes shall be able to substantiate their claims by maintaining an adequate record keeping system. Refund claimants shall verify on the refund application form that an adequate record keeping system is maintained.

(b) An adequate record keeping system shall:

- (1) Account for all purchases of motor fuel from all sources, whether for exempt or taxable use;
- (2) Account for all exempt use either by a standard or an actual use record;
- (3) Account for any loss of exempt fuel due to

pilferage, spillage, or diversion to nonexempt use; and

(4) Include a perpetual inventory which utilizes a system of metered withdrawals or a physical inventory which includes a physical taking of inventory not less than once in each month and at the close of each period for which a claim is filed. (Authorized by K.S.A. 79-3430; implementing K.S.A. 79-3420; effective May 1, 1979; amended May 1, 1982.)

92-3-17. (Authorized by K.S.A. 79-3403, 79-3405; effective May 1, 1979; revoked May 1, 1986.)

92-3-17a. License applications; bond requirements. (a) Each applicant for a distributor, importer, or manufacturer license shall post a bond equal to a three months' average tax liability. New businesses may submit a bond equal to 25% of its estimated tax liability for a 12-month period. The bond shall not be less than the minimum required by statute. The bond requirements shall be met before a license is granted. The bond may be a surety bond executed by a approved corporate surety or a cash bond. Either a cashier's check payable to the director or an escrow account with a Kansas bank shall be used for a cash bond.

(b) The director may reduce the required bond to an amount equal to two months' tax liability, but not less than the minimum required by statute, in consideration of a satisfactory reporting history consisting of the prior 12 months in which there were no delinquencies or returned checks.

(c) Motor fuel tax bonds and financial statements shall be reviewed periodically by the director. The director may require an additional bond or a current certified financial statement if:

(1) the existing bond or financial statement is not sufficient to meet the current average three months' tax liability; or

(2) the licensee is not promptly filing or paying tax; or

(3) the corporate surety is no longer an approved surety. The licensee shall supply the additional bond or certified financial statement within 60 days of receiving notification. Notice shall be deemed received three days after depositing it in United States mail, postage prepaid. (Authorized by K.S.A. 79-3419; implementing K.S.A. 79-3403, 79-3405; effective May 1, 1986.)

92-3-19. Principal business for handling allowance. (a) Each distributor's principal busi-

ness shall be determined on the basis of national gross sales figures. Each distributor claiming a handling allowance for motor vehicle fuel shall provide the director annual figures on total gross business from all sources and on total business from the marketing of motor vehicle fuels or petroleum products. The figures shall be given on a national basis. Each new distributor shall provide total gross sales figures for all sales and for petroleum related product sales for the first six months of its business. Documentation of sales figures shall be made available to the director during reasonable business hours.

(b) Any tax assessed because of a disallowed handling allowance shall be due and payable 60 days after assessment. Interest and penalties may be imposed on any taxes remaining unpaid after the due date. (Authorized by K.S.A. 79-3419; implementing K.S.A. 79-3408, as amended by L. 1985, Ch. 328, Sec. 1, 79-3411; effective May 1, 1986.)

92-3-20. Refunds, books and records. (a) Each person claiming a refund of motor fuel tax for non-highway usage shall substantiate the claim with adequate records. An officer, partner, or owner shall verify each return as to the accuracy of the information included on the return.

(b) An adequate record includes:

(1) An account of all motor fuel purchases that lists each supplier and whether fuel was purchased for exempt or taxable use;

(2) an account of non-highway usage either by an actual record of use or a standard approved by the director;

(3) an account of loss of non-highway fuel due to pilferage, spillage or diversion to non-exempt use; and

(4) a perpetual inventory which uses a system of metered withdrawals or a physical inventory which includes at least a monthly actual inventory and an inventory taken at the close of each period for which a claim is filed.

(c) If a claimant for motor-vehicle fuel tax refund uses storage facilities which contain both fuels for highway and non-highway use, the claimant shall support the return with an accurate record of fuel used for highway and non-highway use. The claimant shall document the usage by:

(1) Different meters attached to a single tank, if one meter is used exclusively for highway fuel and another meter is used exclusively for non-highway fuel;

(2) a single meter capable of recording the type of withdrawal; or

(3) an accurate account that records each withdrawal and its use at the time of withdrawal.

(d) Fuel used shall be presumed to be for highway use unless it is accurately documented for non-highway use.

(e) Highway use of motor fuel includes:

(1) Consumption of motor fuel by a motor vehicle while in a stationary or parked position on the public highways and streets of this state;

(2) using fuel from a motor vehicle's fuel supply tank to power a secondary motor while operating on the public highways or streets of this state. (Authorized by K.S.A. 79-3419; implementing K.S.A. 79-3458; effective May 1, 1986; amended May 1, 1987.)

Article 4.—INCOME TAX

92-4-1 to 92-4-113. (Authorized by K.S.A. 79-3236; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 5.—CIGARETTE TAX

92-5-1. Distinguished; wholesaler-retailer licenses. A wholesale cigarette dealer operating a licensed retail place of business or vending machine shall use a distinctive title for the retail or vending machine operation and shall keep all records of the retail business separate from the records of the wholesale cigarette business. (Authorized by K.S.A. 1967 Supp. 79-3326; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968.)

92-5-2. Vending machines; owner display; record. (a) All owners and operators of cigarette vending machines are hereby required to have the name and address of the owner displayed on each vending machine in operation within the state.

(b) Each owner and operator of cigarette vending machines shall keep a record showing the business location of each vending machine being currently serviced, which shall be available to the director of revenue or his agents at any reasonable time.

(c) The vending machine permit shall be securely and visibly attached to the vending machine. Visibly attached means on the face of the machine, and that it can be seen without moving the machine. (Authorized by K.S.A. 1967 Supp.

79-3303, 79-3326; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968.)

92-5-3. Manufacturer's salespersons. Manufacturer's salespersons shall not have in their possession packages of cigarettes other than sample packages, without the required Kansas tax indicia applied thereto. The salesperson's license shall at all times be posted in the vehicle used by the salesperson in the conduct of the salesperson's business. Cigarettes sold by a manufacturer's salesperson to a retail dealer shall be evidenced by an invoice stating the retail dealer's name, address and retail license number. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3304, 79-3313; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended May 1, 1985.)

92-5-4. (Authorized by K.S.A. 1967 Supp. 79-3311, 79-3326; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; revoked March 22, 2002.)

92-5-5. Interstate shipment, exemptions; transporting unstamped cigarettes. (a)(1) All claims for tax exemption on any shipment of unstamped, cartoned cigarettes consigned in interstate commerce for export from the state of Kansas shall be presented to the director of taxation on the wholesale cigarette dealer's monthly report. The report shall be on a form and in the manner prescribed by the director of taxation.

(2) All invoices or delivery tickets supporting the claims shall be preserved by the wholesale cigarette dealer for three years. Each invoice or delivery ticket shall detail the following information:

(A) The name and address of the consignee;

(B) the date of sale;

(C) the quantity of cigarettes sold; and

(D) if the invoice or delivery ticket includes other merchandise, a separate list of the cigarettes sold by brand at the top or bottom of the invoice or delivery ticket.

The invoices or delivery tickets filed for preservation shall be signed by the consignee to whom delivery was made or by the common carrier making the delivery.

(b) If sealed cartons of cigarettes have not been stamped and are not detailed on invoices or delivery tickets showing them to be consigned to out-of-state dealers or authorized persons on a government military post, each wholesale cigarette

dealer shall furnish the driver of the vehicle transporting these sealed cartons of cigarettes with a memorandum detailing the quantity of unstamped, cartoned, and not consigned cigarettes to be transported to the border of the state of Kansas or government military post.

The driver of the vehicle transporting the cartons of cigarettes that have not been stamped or consigned shall have in the driver's possession at all times the quantity of cigarettes outlined in the memorandum or receipted invoices or delivery tickets showing to whom the cigarettes were sold, delivered, or given away, so that the total number of cartons of cigarettes shown by the signed invoices and delivery tickets and the number of cartons of cigarettes on hand balance with the memorandum described. All claims for the tax exemption on any sales or deliveries made in this manner shall be procured as outlined in subsection (a) of this regulation. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3311, as amended by L. 2001, Ch. 5, § 450 and K.S.A. 2000 Supp. 79-3316; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.)

92-5-6. Wholesaler; receiving stamped cigarettes. A wholesale cigarette dealer who receives cigarettes already stamped from another wholesale cigarette dealer shall be required to report to the director of taxation, each month, all of these receipts. All cigarettes sold or delivered by one wholesale cigarette dealer to another licensed wholesale cigarette dealer in the state of Kansas shall be stamped by the wholesale cigarette dealer making the sale or delivery. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3311, as amended by L. 2001, Ch. 5, § 450 and K.S.A. 2000 Supp. 79-3316; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.)

92-5-7. Wholesaler; separate locations, bond. Each wholesale cigarette dealer having more than one wholesale place of business in the state of Kansas shall be required to file an application and pay the required fee for each place of business owned or operated by that dealer. Each place of business licensed shall be covered by a surety bond furnished by the wholesale dealer as provided in K.S.A. 79-3304, and amendments thereto. If the wholesale cigarette dealer is unable to obtain a surety bond, a cash bond or escrow account agreement may be accepted by the direc-

tor. A cash bond or escrow account agreement shall be submitted in writing with a copy of the surety bond rejection letter. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3304; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.)

92-5-8. Wholesaler; trucker, salesperson. (a) Each licensed wholesale cigarette dealer who employs truckers or salespeople, either salaried or working on a commission, to both sell and distribute cigarettes to licensed retail dealers shall obtain an identification card for each trucker and salesperson. Application forms for the identification cards shall be furnished upon request by the director of taxation.

(b) All sales of cigarettes made by any trucker or salesperson shall be written up on sales books furnished by the wholesale cigarette dealer, detailing the name of the wholesale dealer. Copies of all sales tickets shall be kept for a period of three years in the files of the wholesale dealer.

(c) The identification card furnished shall be kept posted at all times in the conveyance of each trucker or salesperson. The identification card shall be valid during the term of the wholesale cigarette dealer's license, or until the license is revoked, suspended or surrendered.

(d) If a trucker or salesperson is no longer employed by the wholesale cigarette dealer, the wholesale cigarette dealer shall notify the director and return the identification card furnished to the trucker or salesperson.

(e) Any individual who obtains cigarettes from a wholesale cigarette dealer for sale and distribution to retail cigarette dealers and who is not an employee of the wholesale cigarette dealer shall be required to be licensed as a wholesale cigarette dealer. (Authorized by K.S.A. 79-3326; implementing K.S.A. 2000 Supp. 79-3316; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.)

92-5-9. Redemption of unused stamps. The cost of any unused cigarette stamps that any wholesale cigarette dealer presents for refund may be refunded by the director of taxation. The unused cigarette stamps shall be presented for refund within six months from the date of the purchase from the director of taxation. The stamps shall be returned to the director of taxation, and a refund may be issued for the face value less 2.65 percent. (Authorized by K.S.A. 79-3326; imple-

menting K.S.A. 79-3312; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended, E-71-21, July 1, 1971; amended Jan. 1, 1972; amended March 22, 2002.)

92-5-10. Cigarettes unfit for sale. If cigarettes on which the Kansas tax has been paid, as evidenced by cigarette tax stamps or tax indicia, have become unfit for use or consumption, unsalable, or damaged or destroyed by fire, flood, or similar causes, the value of the tax paid less 2.65 percent may be refunded by the director of taxation, upon receipt of satisfactory proof, to the wholesaler who has paid the tax. The director of taxation shall be notified before the destruction of damaged or partially damaged cigarettes, and the merchandise shall be kept available for inspection by a representative of the director of taxation's office. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3312; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended, E-71-21, July 1, 1971; amended Jan. 1, 1972; amended March 22, 2002.)

92-5-11. (Authorized by K.S.A. 1967 Supp. 79-3311, 79-3326; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; revoked March 22, 2002.)

92-5-12. Bond; cancellations. The surety on a bond furnished by a wholesale cigarette dealer as required by the cigarette tax law shall be released and discharged from all liability to the state accruing on the bond after the expiration of 60 days from the date upon which the surety has submitted to the director of taxation a written request to be released and discharged. However, this provision shall not operate to relieve, release, or discharge the surety from any liability that has already accrued or that will accrue before the expiration of the 60-day period.

Prompt notification of the wholesale cigarette dealer who furnished the bond shall be made by the director of taxation upon receiving such a request. If the dealer fails to file with the director of taxation, on or before the expiration of the 60-day period, a new bond fully complying with the provisions of the cigarette tax law, the license or licenses of the dealer shall be revoked and canceled by the director of taxation in accordance with K.S.A. 79-3309, and amendments thereto. The dealer shall be notified by the director of taxation. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3304, 79-3309, 79-3311, as

amended by L. 2001, Ch. 5, § 450; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.)

92-5-13. Credits. In order to purchase stamps on credit, the wholesale dealer shall forward to the division of taxation a completed stamp purchase order form for the number of stamps that the dealer wishes to purchase as a credit transaction. The purchase order shall be charged to the wholesaler's account on the date the purchase order is approved.

Presentation of company or personal checks that have not been certified shall not be considered payment of credit purchases until the company or personal checks have been presented to and accepted by the bank for payment.

If a delinquency of payment for stamps occurs, the wholesaler's credit privileges shall be discontinued for a period of time prescribed by the director of taxation. Notice of the delinquency shall be forwarded to the surety. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3311, as amended by L. 2001, Ch. 5, § 450; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.)

92-5-14. Vending machines; cigarette sales only. A cigarette vending machine may be used for cigarette sales only. No candy or any other items may be sold from a cigarette vending machine. (Authorized by K.S.A. 79-3303, 79-3326; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979.)

Article 6.—KANSAS RETAILERS' SALES TAX

92-6-1 to 92-6-87. (Authorized by K.S.A. 79-3618; effective Jan. 1, 1966; revoked, E-70-33, July 1, 1970; revoked, E-71-8, Jan. 1, 1971; revoked Jan. 1, 1972.)

Article 7.—COMPENSATING TAX

92-7-1 to 92-7-23. (Authorized by K.S.A. 79-3707; effective Jan. 1, 1966; revoked, E-70-33, July 1, 1970; revoked, E-71-8, Jan. 1, 1971; revoked Jan. 1, 1972.)

Article 8.—CEREAL MALT BEVERAGE TAX

92-8-1. (Authorized by K.S.A. 1982 Supp. 79-3835; implementing K.S.A. 41-2713; effective

Jan. 1, 1966; amended July 1, 1974; amended May 1, 1983; revoked May 1, 1987.)

92-8-2. (Authorized by K.S.A. 79-3835, 79-3837; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1987.)

92-8-3. (Authorized by K.S.A. 79-3835, 79-3939; effective Jan. 1, 1966; revoked May 1, 1987.)

92-8-4. (Authorized by K.S.A. 17-2802, 79-3835; effective Jan. 1, 1966; revoked May 1, 1987.)

92-8-5. (Authorized by K.S.A. 79-3828, 79-3837; effective Jan. 1, 1966; revoked May 1, 1987.)

92-8-6. (Authorized by K.S.A. 79-3835, 79-3837; effective Jan. 1, 1966; revoked May 1, 1987.)

92-8-7. (Authorized by K.S.A. 79-3824, 79-3835; effective Jan. 1, 1966; revoked May 1, 1987.)

92-8-8. (Authorized by K.S.A. 1973 Supp. 79-3825, 79-3835; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked May 1, 1987.)

92-8-9. (Authorized by K.S.A. 79-3818, 79-3824, 79-3835; effective Jan. 1, 1966; revoked Jan. 1, 1972.)

92-8-9a. (Authorized by K.S.A. 41-209(2); implementing K.S.A. 41-209(2); effective May 1, 1985; revoked May 1, 1987.)

92-8-10. (Authorized by K.S.A. 79-3827, 79-3828, 79-3835; effective Jan. 1, 1966; revoked May 1, 1987.)

92-8-11. (Authorized by K.S.A. 41-211, 41-2717; implementing L. 1985, Ch. 168, Sec. 5, K.S.A. 41-401, K.S.A. 41-2712; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 1987.)

92-8-12. (Authorized by K.S.A. 27-102a, 79-3824, 79-3835; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1987.)

92-8-13. (Authorized by K.S.A. 79-3828, 79-3835; effective Jan. 1, 1966; revoked May 1, 1987.)

92-8-14. (Authorized by K.S.A. 1981 Supp. 79-3835; implementing K.S.A. 1981 Supp. 41-2705, 41-2713; effective Jan. 1, 1966;

amended, E-74-37, July 1, 1974; amended May 1, 1975; amended May 1, 1982; revoked May 1, 1987.)

92-8-15. (Authorized by K.S.A. 79-3828, 79-3835; effective Jan. 1, 1966; revoked May 1, 1987.)

92-8-16. (Authorized by K.S.A. 79-3819; K.S.A. 1973 Supp. 79-3824, 79-3835; effective, E-73-21, Oct. 6, 1972; effective Jan. 1, 1974; revoked May 1, 1987.)

92-8-17. (Authorized by K.S.A. 1973 Supp. 79-3825, 79-3835; effective Jan. 1, 1974; revoked May 1, 1987.)

92-8-18. (Authorized by K.S.A. 79-3835; implementing L. 1985, Ch. 168, Sec. 5; effective May 1, 1986; revoked May 1, 1987.)

92-8-19. (Authorized by K.S.A. 41-2717; implementing K.S.A. 41-2705(b)(1)(D); effective May 1, 1985; revoked May 1, 1987.)

92-8-20. (Authorized by K.S.A. 79-3835; implementing L. 1985, Ch. 168, Sec. 5; effective May 1, 1986; revoked March 29, 2002.)

Article 9.—MINERALS AND NATURAL PRODUCTS LEASES ON NAVIGABLE STREAMBEDS

92-9-1. Bidders; notice; form of bids. (a) Legal notice to bidders for oil and gas lease land in navigable streambeds shall be published by the director of taxation in a paper of general circulation in the county in which the lands subject to oil and gas leases are situated once each week for a period of four consecutive weeks.

(b) The highest and best bid from a responsible bidder shall be accepted by the director of taxation, reserving the right to reject any bid and republish. Separate sealed bids accompanied by a certified check or bank draft in the amount of the bid payable to the director of taxation for each tract shall be submitted on forms supplied by the department of revenue and filed with the director of taxation, in accordance with the publication notice concerning the bids.

(c) Each bidder shall have the right to bid on all or any portion of the lands set forth in the publication notice, and the successful bidder shall reimburse the director of taxation for the publication costs. However, this regulation shall apply only to the removal of oil and gas from navigable

streambeds. (Authorized by K.S.A. 70a-103; implementing K.S.A. 2001 Supp. 70a-102, K.S.A. 70a-103; effective Jan. 1, 1966; amended March 29, 2002.)

92-9-2. Cash bonus; rental. Bids for the leasing of oil and gas rights in navigable streams will be considered on the basis of a cash bonus, annual delay rental, and the amount of royalty to be paid shall not be less than 12½% of the gross proceeds at the prevailing market rate. Leases will be executed on a standard Kansas lease form. No lease shall be for a period longer than five years and the lessee shall agree to pay an annual rent in advance on land so long as drilling is delayed. (Authorized by K.S.A. 71-102, 71-103; effective Jan. 1, 1966.)

92-9-3. Survey; expense of. If the lessee of oil and gas rights requests a survey to determine acreage, a survey may be authorized by the director of taxation, if the lessee agrees to pay the cost. In lieu of this survey, the United States government survey or other official survey of the tract may be used. (Authorized by K.S.A. 70a-103; implementing K.S.A. 70a-106; effective Jan. 1, 1966; amended March 29, 2002.)

92-9-4. Wells; operation and management. Each oil lessee and gas lessee leasing wells pursuant to K.S.A. 70a-101, and amendments thereto, shall furnish the director of taxation on demand accurate and reliable information concerning wells situated in Kansas. On demand, each lessee shall furnish certified copies of pipeline runs and gas balancing statements to the director of taxation. Title requirements and leases shall be without covenants of warranty. (Authorized by K.S.A. 70a-103; implementing K.S.A. 2001 Supp. 70a-102, K.S.A. 70a-103; effective Jan. 1, 1966; amended March 29, 2002.)

92-9-5. Location of operations. The lessee shall notify the director of taxation before commencing operations on any navigable streambed. (Authorized by K.S.A. 70a-103; implementing K.S.A. 2001 Supp. 70a-102, K.S.A. 70a-103; effective Jan. 1, 1966; amended March 29, 2002.)

92-9-6. (Authorized by K.S.A. 70a-102, 70a-103; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked July 3, 1989.)

92-9-6a. Returns; rates and restrictions. (a) On or before the 15th day of each month, each lessee shall file a return with the director stating

the amount of material withdrawn, returned, stored and sold, and the name of the person(s) to whom the material was sold during the preceding month. The lessee shall remit with the return 15¢ per ton for all river sand sold during the preceding month. Each lessee shall maintain this information for a period of two years.

(b) Each lessee shall not take, move or remove material from any navigable stream within:

(1) 500 feet of any bridge pier or abutment;

(2) 200 feet of any stabilized bank or structure built or authorized by the United States government.

A lessee shall not remove sand from any stream bed or channel within a distance of 1,500 feet of the nearest tipple erected and maintained and used for the purpose of taking sand from the river. The distances of 500 and 200 feet are to be construed as minimum distances with greater distances required as necessary to preserve stream bed and bank stability. (Authorized by and implementing K.S.A. 70a-102, 70a-103; effective July 3, 1989.)

92-9-7. (Authorized by K.S.A. 71-102, 71-103; effective Jan. 1, 1966; revoked March 29, 2002.)

92-9-8. (Authorized by K.S.A. 71-102, 71-103; effective Jan. 1, 1966; revoked July 27, 2001.)

Article 10.—SPECIAL FUEL TAX

92-10-1 and 92-10-2. (Authorized by K.S.A. 79-3483; effective Jan. 1, 1966; revoked, E-69-16, July 23, 1969; revoked Jan. 1, 1970.)

Article 11.—WITHHOLDING AND ESTIMATED TAX

92-11-1. (Authorized by K.S.A. 79-3236, 79-3297a; implementing K.S.A. 79-3296, 79-3297a; effective Jan. 1, 1966; amended, E-67-14, Aug. 9, 1967; amended Jan. 1, 1968; amended Jan. 1, 1972; amended, E-77-6, March 19, 1976; amended Feb. 15, 1977; amended, E-78-21, Aug. 10, 1977; amended May 1, 1978; amended May 1, 1986; revoked March 29, 2002.)

92-11-2. (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294; effective Jan. 1, 1966; revoked March 29, 2002.)

92-11-3. (Authorized by K.S.A. 79-3236, 79-3294; effective Jan. 1, 1966; amended, E-78-

21, Aug. 10, 1977; amended May 1, 1978; revoked March 29, 2002.)

92-11-4. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3297a; effective Jan. 1, 1966; amended, E-67-14, Aug. 9, 1967; amended Jan. 1, 1968; amended, E-77-6, March 19, 1976; amended Feb. 15, 1977; amended, E-78-21, Aug. 10, 1977; amended May 1, 1978; amended, E-80-26, Dec. 12, 1979; amended May 1, 1980; amended, T-83-10, June 9, 1982; amended May 1, 1983; amended, T-84-15, July 1, 1983; amended May 1, 1984; amended May 1, 1986; revoked March 29, 2002.)

92-11-5. (Authorized by K.S.A. 79-3236, 79-3296, 79-3297a; effective Jan. 1, 1966; amended, E-67-14, Aug. 9, 1967; amended Jan. 1, 1968; amended, E-77-6, March 19, 1976; amended Feb. 15, 1977; amended, E-78-21, Aug. 10, 1977; amended May 1, 1978; revoked March 29, 2002.)

92-11-6. (Authorized by K.S.A. 79-3236, 79-3296, 79-3297a; effective Jan. 1, 1966; amended, E-67-14, Aug. 9, 1967; amended Jan. 1, 1968; amended Jan. 1, 1974; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; revoked March 29, 2002.)

92-11-7. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3299; effective Jan. 1, 1966; amended May 1, 1976; amended May 1, 1986; revoked March 29, 2002.)

92-11-8. (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294; effective Jan. 1, 1966; revoked March 29, 2002.)

92-11-9. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3298, as amended by L. 1985, Ch. 323, Sec. 1; effective Jan. 1, 1966; amended May 1, 1986; revoked March 29, 2002.)

92-11-10. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3299, 79-32,100; effective Jan. 1, 1966; amended May 1, 1986; revoked March 29, 2002.)

92-11-11. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3299; effective Jan. 1, 1966; amended May 1, 1986; revoked March 29, 2002.)

92-11-12. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3298, as amended by L.

1985, Ch. 323, Sec. 1; effective Jan. 1, 1966; amended May 1, 1986; revoked March 29, 2002.)

92-11-13. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3295, 79-3296, 79-3298; effective Jan. 1, 1966; amended, E-67-14, Aug. 9, 1967; amended Jan. 1, 1968; amended Jan. 1, 1974; amended May 1, 1981; revoked March 29, 2002.)

92-11-14. (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294; effective Jan. 1, 1966; revoked March 29, 2002.)

92-11-15. (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294; effective Jan. 1, 1966; revoked March 29, 2002.)

92-11-16. (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294, 79-32,104(c); effective Jan. 1, 1966; revoked March 29, 2002.)

92-11-17. (Authorized by K.S.A. 79-3236, 79-32,101; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-11-18. (Authorized by K.S.A. 79-3236, 79-3294; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-11-19. (Authorized by K.S.A. 79-3236, 79-32,103; effective Jan. 1, 1966; amended Jan. 1, 1970; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-11-20. Declaration of estimated tax forms. (a) *Individuals.* Individuals shall file the declaration of estimated tax on form 40ES. All information requested on that form shall be supplied.

(b) *Corporations.* Corporations shall file the declaration of estimated tax on form 120ES. All information requested on that form shall be supplied.

(c) *Amendments.* In the case of an individual, the amendment is contained on the back of form 40ES, which is the notice of installment due received by the taxpayer from the department of revenue. In the case of a corporation, the amended declaration is contained on the back of form 120ES, which is the notice of installment due of estimated corporate tax. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-32,101, 79-32,102; effective Jan. 1, 1966;

amended, E-82-26, Dec. 16, 1981; amended May 1, 1982.)

92-11-21. Payment of estimated tax. (a) *General.* The following rules govern the time for payment of the estimated tax for calendar years:

Date of Filing Declaration If the declaration is filed:	Dates of Payment of Estimated Tax Estimated tax shall be paid:
On or before April 15;	In four equal installments—one at time of filing declaration, one not later than June 15, one not later than September 15, one not later than January 15, following year; except corporations who shall pay the fourth installment on December 15 of the taxable year;
After April 15 and before June 15 and not required to be filed on or before April 15;	In three equal installments—one at time of filing declaration, one not later than September 15, one not later than January 15, following year; except corporations who shall pay the third installment on December 15 of the taxable year;
After June 15 and before September 15 and not required to be filed on or before June 15;	In two equal installments—one at time of filing declaration and one not later than January 15, following year; except corporations who shall pay the second installment on December 15 of the taxable year;
After September 15 and not required to be filed on or before that date.	In full at time of filing declaration.

(b) *Fiscal year due dates.* In the case of a taxpayer on a fiscal year basis, there shall be substituted for the dates April 15, June 15, September 15 and January 15, the 15th day of the fourth month, the 15th day of the sixth month, the 15th day of the ninth month and the 15th day of the first month in succeeding fiscal year.

(c) *Early payment.* At the election of the taxpayer any installment of estimated tax may be paid prior to the date prescribed for payment. (Authorized by K.S.A. 79-3236, 79-32,103; effective Jan. 1, 1966; amended Jan. 1, 1970.)

92-11-22. Credit. (a) *General.* The amount of estimated tax paid by the taxpayer during the calendar or fiscal year shall be allowed as a credit

on the return filed by the taxpayer under the provisions of the Kansas income tax act.

(b) *Credit or refund.* In the event that the amount of declaration of estimated tax and/or the amount of tax withheld from wages exceeds the amount of tax due under the provisions of the Kansas income tax act, the taxpayer has the following options:

(1) To request a refund of such overpayment or overwithholding or

(2) To apply the amount of such overpayment or overwithholding to the declaration of estimated tax for the succeeding calendar or fiscal year.

(c) *Adjustment of credit prohibited.* In the event that the overpayment or overwithholding is credited to the declaration of estimated tax liability for the succeeding calendar or fiscal year and the taxpayer's income tax liability for the fiscal or calendar year is adjusted to reflect additional tax due, the amount of credit to the succeeding tax year's estimate will not be adjusted. In such cases the taxpayer will be billed for any increase and will be required to pay the deficiency pursuant to the provisions of the Kansas income tax act. (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294; effective Jan. 1, 1966.)

92-11-23. (Authorized by K.S.A. 79-3236, 79-3294; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-11-24. Short taxable years. Any estimated tax, payable in installments, which is not paid before the 15th day of the last month of a short taxable year shall be paid on the 15th day of the last month of the short taxable year. If the short taxable year is less than three and one-half (3½) months, a declaration shall not be required to be filed and estimated tax shall not be required to be paid for that year. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-32,103; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982.)

Article 12.—INCOME TAX

92-12-1. (Authorized by K.S.A. 79-3236; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-2. (Authorized by K.S.A. 79-3236, 79-32,109; effective Jan. 1, 1968; amended Jan. 1, 1970; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1982.)

92-12-3. (Authorized by K.S.A. 79-3236,

79-32,109; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-4. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-32,109; effective Jan. 1, 1968; amended May 1, 1982; amended May 10, 2002; revoked March 24, 2006.)

92-12-4a. Resident individual. (a) As used in this regulation, the term “Kansas resident” shall have the same meaning as that assigned to the term “resident individual” in K.S.A. 79-32,109, and amendments thereto.

(b) This subsection shall apply in determining whether a natural person is a “resident individual,” as the term is defined in K.S.A. 79-32,109 and amendments thereto, on the basis that the person’s domicile is within Kansas.

(1) Subject to the further conditions and requirements in this subsection, “domicile” shall mean that place in which a person’s habitation is fixed, without any present intention of removal, and to which, whenever absent, that person intends to return.

(2) Each person shall have only one domicile at any particular time. Once shown to exist, a domicile shall be presumed to continue until the contrary is shown. The absence of any intention to abandon an existing domicile shall be considered to be equivalent to the intention to retain the domicile.

(A) A person who leaves that person’s domicile to go into another jurisdiction for temporary purposes shall not be considered to have lost the domicile. The mere intention to acquire a new domicile, without the fact of physical removal, shall not change a person’s domicile, and the fact of physical removal from a person’s domicile, without the intention to remain absent, shall not change that person’s domicile.

(B) If a person whose domicile is in Kansas is absent from Kansas for more than six months of the tax year, that person shall not be presumed to have lost that domicile. If a person leaves this state to accept a job assignment in another jurisdiction, that person shall not be presumed to have lost that person’s domicile in this state.

(C) A person who is temporarily employed within this state shall not be deemed to have acquired a domicile in this state if, during that period, the person maintains that person’s domicile outside of the state of Kansas.

(3) A person shall be considered to have established that person’s domicile in Kansas on the date

that the person arrives in the state for other than temporary or transitory purposes. A person shall be considered to have abandoned that person’s domicile on the date that the person leaves the state without any intention to return to Kansas.

(4) Any citizen of a foreign country may acquire a domicile for Kansas tax purposes without surrendering that person’s rights as a citizen of that country.

(5) Except for a person who is covered by the provisions of the soldiers’ and sailors’ civil relief act of 1940, 50 U.S.C. app. § 574, as amended by the servicemembers civil relief act, public law 108-189, there shall be a presumption that the place where a person’s family is domiciled is that person’s domicile. The domicile of a person who is married shall be the same as the person’s spouse unless there is affirmative evidence to the contrary, the husband and wife are legally separated, or the marriage has been dissolved. When a person has made a home at any place with the intention of remaining there indefinitely and the person neither lives at the home in which the person’s family lives nor intends to do so, then that person shall be deemed to have established a domicile separate from that person’s family.

(6) If a minor child is not emancipated, the domicile of the child’s parents shall be the domicile of the child. The domicile of the parent who has legal custody of the child shall be the domicile of the child.

(7) The following factors may be considered in determining whether or not a person’s domicile is in this state for the tax years in question, although none of these factors shall, by itself, be a determinant of a person’s domicile:

(A) The percentage of time that the person is physically present within the state of Kansas and the percentage of time that the person is physically present in each jurisdiction other than the state of Kansas;

(B) the location of the person’s domicile for prior years;

(C) the location at which the person votes or is registered to vote, except that casting an illegal vote shall not establish a domicile for income tax purposes;

(D) the person’s status as a student;

(E) the location of services performed by the person in the course of employment;

(F) the classification of the person’s employment as temporary or permanent;

(G) the change in the person’s living quarters;

(H) the person's ownership of other real property;

(I) the jurisdiction in which the person has been issued a valid driver's license;

(J) the jurisdiction from which any motor vehicle registration was issued to the person and the actual physical location of the person's vehicle or vehicles;

(K) the purchase of any resident fishing or hunting licenses by the person;

(L) the filing by the person of a Kansas tax return, report, or application as a Kansas resident or a nonresident individual;

(M) the fulfillment or failure to fulfill by the person of the tax obligations required of a Kansas resident;

(N) the address where personal mail is received by that person and not subsequently forwarded;

(O) the location of the jurisdiction from which any unemployment compensation benefits are received by the person;

(P) the location of any school that the person or the person's spouse attends and whether resident or nonresident tuition was charged, as well as the location of the school attended by any of the person's children who are in grades K-12;

(Q) the representations made to any insurance company concerning the person's residence and on which any insurance policies are issued;

(R) the location where the person, the person's spouse, or the person's minor children regularly participate in sporting events, group activities, or public performances; and

(S) any other fact relevant to the determination of that person's domicile.

(8) The following factors shall not be considered in determining whether or not a person is domiciled in Kansas:

(A) The location of any organization to which the person makes charitable contributions; and

(B) the location of any charitable organization for which the person serves as a board member, committee member, or other volunteer.

(c) This subsection shall apply in determining whether a natural person is a "resident individual," as the term is defined in K.S.A. 79-32,109 and amendments thereto, based on the presumption that a natural person who spends, in the aggregate, more than six months of the taxable year within the state of Kansas is a resident individual in the absence of proof to the contrary.

(1) In counting the number of days spent in Kansas, the person shall be treated as present in

Kansas on each day that the person is physically present in Kansas at any time during that day.

(2) The length of time that a person spends in Kansas during a taxable year shall not be used to determine whether the person is a resident individual if that person is deemed not to be a resident of Kansas under the soldiers' and sailors' relief act of 1940, 50 U.S.C. app. § 574, as amended by the servicemembers civil relief act, public law 108-189.

(3) The presumption that a person who spends, in the aggregate, more than six months of the taxable year within the state of Kansas is a resident individual in the absence of proof to the contrary shall be deemed to be rebutted if the person is temporarily employed within this state but maintains that person's domicile outside of the state of Kansas.

(d) Each natural person who is deemed not to be a resident of Kansas using criteria established under other statutes, regulations, or policies regarding residency shall nonetheless be deemed a resident individual if the person meets the conditions and requirements established by this regulation.

(e)(1) Each Kansas resident who moves at any time during the tax year to another jurisdiction without any intention to return to Kansas shall be considered a part-year Kansas resident for that tax year.

(2) Each person whose domicile is outside of Kansas, but who moves that person's domicile to Kansas at any time during the tax year, shall be deemed to be a part-year Kansas resident. (Authorized by K.S.A. 2005 Supp. 75-5155 and K.S.A. 79-3236; implementing K.S.A. 79-32,109; effective March 24, 2006.)

92-12-5. (Authorized by K.S.A. 79-3236, K.S.A. 1967 Supp. 79-32,109; effective Jan. 1, 1968; revoked March 24, 2006.)

92-12-6. Resident status of certain individuals. A person who is a resident of this state, does not terminate residency upon entering the armed services or peace corps of the United States. A member of the armed services domiciled in Kansas at the time he entered such service generally retains his status as a domiciliary of Kansas throughout his stay in the service, regardless of where he may be assigned to duty or how long.

For purposes of this act a person shall not be deemed to be a resident of Kansas, nor will he lose his status as a resident of the state in which

he formerly resided, solely because of a transfer into this state under military orders. Such person may, however, become a resident of Kansas for purposes of this act by the performance of certain overt acts which would constitute a termination of his residence in such former state and the establishment of a residence in Kansas.

A resident of Kansas establishing temporary quarters in another state or foreign country remains a resident of Kansas.

A nonresident individual means an individual other than a resident individual. (Authorized by K.S.A. 79-3236, K.S.A. 1967 Supp. 79-32,109; effective Jan. 1, 1968.)

92-12-7. (Authorized by K.S.A. 79-3236; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-8. Corporation. The term "corporation" as used in these regulations includes not only corporations which have been created or organized under the laws of Kansas, but also every corporation doing business within this state or deriving income from sources within this state, in a corporate or organized capacity, by virtue of creation or organization under the laws of the United States or some state, territory or district or a foreign country. The term "corporation" is not limited to the legal entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint stock company, and certain kinds of partnerships. Any association or organization which is required to report as a corporation, for federal income tax purposes under the internal revenue code of 1954 as amended during the taxable year, shall be considered to be a corporation for the purposes of the Kansas act. Conversely, any association, organization or corporation required to report in any other capacity, for federal income tax purposes under the internal revenue code as amended during the taxable year, shall report in a like capacity for purposes of the Kansas act. (Authorized by K.S.A. 79-3236, K.S.A. 1971 Supp. 79-32,110; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972.)

92-12-9 and 92-12-10. (Authorized by K.S.A. 79-3236, 79-32,109; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-11. Credits for income taxes paid to other states. (a) The credit for income tax paid to another state allowed by K.S.A. 79-32,111, and amendments thereto, shall be limited

to the net amount of income taxes actually paid to another state. The net amount of income taxes actually paid to another state shall be the amount of the taxpayer's tax liability to the other state less any refundable or nonrefundable tax credits allowed by the other state. The net amount of income tax paid to another state shall not include interest or penalties paid to another state.

(b) The credit for income tax paid to another state shall be taken at the time of filing the income tax return and shall be applied against the entire tax until the credit is exhausted. A copy of the return or returns on which the taxes are assessed shall be filed with the director of taxation, at the time the credit is claimed.

(c) Credit for income tax paid to another state on income for any year shall be applied only against tax due on income for the same year. (Authorized by K.S.A. 79-3236; implementing K.S.A. 2000 Supp. 79-32,111; effective Jan. 1, 1968; amended Jan. 1, 1974; amended May 1, 1982; amended May 10, 2002.)

92-12-12. (Authorized by K.S.A. 79-3236, 79-32,112; effective Jan. 1, 1968; amended Jan. 1, 1972; amended May 1, 1976; revoked, E-80-2, Jan. 18, 1979; revoked May 1, 1979.)

92-12-13. (Authorized by K.S.A. 79-3236, 79-32,112; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1976; revoked, E-80-2, Jan. 18, 1979; revoked May 1, 1979.)

92-12-14. Persons and organizations exempt from Kansas income tax. A person or organization claiming an exemption from Kansas income taxation under the provisions of subsection (a) of K.S.A. 1980 Supp. 79-32,113 shall submit evidence to the director of the person's or organization's exemption from federal income taxation, when so called upon by the director. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-32,113; effective Jan. 1, 1968; amended Jan. 1, 1974; amended May 1, 1982.)

92-12-15. (Authorized by K.S.A. 79-3236, 79-32,114; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-16. Change of accounting period. Permission for change of a taxpayer's Kansas taxable year shall not be required from the director. In all cases a short period return shall be filed to

accomplish this change. The Kansas taxable income for this short period shall be computed in the same manner as is the federal taxable income for this short period. For the purpose of the tax computation on a short period individual income tax return, only the taxable income for the short period shall be reported, but the tax exemptions and the Kansas standard deduction shall be apportioned by the same ratio as the number of months in the short period bears to twelve (12) months. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-32,114; effective Jan. 1, 1968; amended May 1, 1982.)

92-12-17 and 92-12-18. (Authorized by K.S.A. 79-3236, 79-32,114; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-19. Limitation of tax-spreadback rule. When an accounting method is changed in compliance with K.S.A. 79-32,114(c) or (d) (i), other than from an accrual to an installment method, any additional tax which results from the adjustments determined to be necessary solely by reason of the change shall not be greater than if these adjustments were divided equally between the year of change and the two (2) preceding taxable years during which the taxpayer used the method of accounting from which the change is made. But, if the taxpayer has only one (1) preceding taxable year, the allocation may be made equally between the year of change-over and the one (1) preceding year. For the purpose of re-determining the tax liabilities under the two-year carry-back rule all computations shall be made as though the returns for the three (3) years were being amended to include the income thus apportioned, and all income, deductions, and limitations shall be adjusted accordingly. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-32,114; effective Jan. 1, 1968; amended May 1, 1982.)

92-12-20. Change from accrual to installment method of accounting. If for any tax year beginning after December 31, 1967, the taxpayer is allowed or required to change from the accrual to the installment method of accounting to comply with K.S.A. 1967 Supp. 79-32,114 (c) or (d) (i), no part of the installments collected in the year of the change or thereafter may be excluded from income, even though the income reported before the year of change had already reflected the amount of the sales including such

installments. Therefore, for the year of change or subsequent years, (such years being referred to as the adjustment years) in which such amounts are reflected in income the second time, the tax for such year of change or subsequent year shall be reduced by an adjustment computed as follows:

(1) Determine separately the portion of the tax for each taxable year before the year of change which is attributable to the gross profit from installment sales which was included in gross income in that year and which is also includable in gross income for any adjustment year;

(2) Determine separately the portion of the tax for each adjustment year which is attributable to the gross profit described in subdivision (1) of this regulation;

(3) Select for each adjustment year the lesser of the amounts determined under subdivisions (1) and (2) of this regulation;

(4) The tax imposed in any adjustment year shall be reduced by the amount as determined in subdivision (3) of this regulation or the sum of all such amounts if more than one prior taxable year is involved.

The portion of the tax for any taxable year attributable to the gross profit described in subdivision (1) of this regulation shall be that proportion of the tax determined for such year, without regard to the adjustments under this regulation, which the gross profit included in gross income in the prior year and includable in gross income for the adjustment year bears to the gross income of such prior year. (Authorized by K.S.A. 79-3236, K.S.A. 1967 Supp. 79-32,114; effective Jan. 1, 1968.)

92-12-21. (Authorized by K.S.A. 79-3236, 79-32,115; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-22. (Authorized by K.S.A. 79-3236, 79-32,117; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-23. (Authorized by K.S.A. 79-3236, 79-32,117; effective Jan. 1, 1968; amended May 1, 1976; revoked May 1, 1982.)

92-12-24. (Authorized by K.S.A. 79-3236, 79-32,117; effective Jan. 1, 1968; amended, E-71-8, Jan 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1982.)

92-12-25 and 92-12-26. (Authorized by

K.S.A. 79-3236, 79-32,117; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-27. Kansas deduction of an individual. A taxpayer entitled to elect to either itemize deductions or to take the Kansas standard deduction shall be bound by an election unless an amended return is filed. In the absence of an election, the taxpayer shall be deemed to have elected to take the Kansas standard deduction. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-32,118, 79-32,119, 79-32,120; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; amended May 1, 1982.)

92-12-28. (Authorized by K.S.A. 79-3236, 79-32,120; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-29. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-32,120; effective Jan. 1, 1968; amended May 1, 1982; revoked May 10, 2002.)

92-12-30. (Authorized by K.S.A. 79-3236, 79-32,121; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-31. (Authorized by K.S.A. 79-3236, 79-32,123; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-32. (Authorized by K.S.A. 79-3236, 79-32,124; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-33. (Authorized by K.S.A. 79-3236, 79-32,123; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-34. (Authorized by K.S.A. 79-3236, 79-32,126; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-35. (Authorized by K.S.A. 79-3236, 79-32,127; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-36. (Authorized by K.S.A. 79-3236, 79-32,128; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-37. (Authorized by K.S.A. 79-3236, 79-32,129; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-38. (Authorized by K.S.A. 79-3236,

79-32,130; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-39. (Authorized by K.S.A. 79-3236, 79-32,131; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-40. (Authorized by K.S.A. 79-3236, 79-32,132; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-41. (Authorized by K.S.A. 79-3236, 79-32,133; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-42. (Authorized by K.S.A. 79-3236, 79-32,134; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-43. (Authorized by K.S.A. 79-3236, 79-32,135; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-44. (Authorized by K.S.A. 79-3236, 79-32,136; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-45 and 92-12-46. (Authorized by K.S.A. 79-3236, 79-32,137; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-47. Distribution withholding. The fiduciary of a resident estate or trust shall within 30 days of the close of the taxable year of the estate or trust furnish or mail to the last known address of each nonresident beneficiary from which deductions have been made in accordance with K.S.A. 79-32,137, and amendments thereto, a report in duplicate on a form furnished by the director showing the amount of the deduction during the taxable year of the resident estate or trust. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-32,137; effective Jan. 1, 1968; amended May 10, 2002.)

92-12-48. (Authorized by K.S.A. 79-3236, 79-32,138; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1982.)

92-12-49. (Authorized by K.S.A. 79-3236, 79-32,139; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-50. (Authorized by K.S.A. 79-3236, 79-32,140; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-51. (Authorized by K.S.A. 79-3236,

79-32,141; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-52. Consolidated returns. Corporations which are members of an affiliated group which do not derive their entire income from sources within Kansas and have filed a federal consolidated return for federal income tax purposes, may file a consolidated return for purposes of determining their Kansas income tax liability. The director may permit or require this group of affiliated corporations to file consolidated returns provided they are permitted to file a federal consolidated return and when in the director's opinion this consolidated return is necessary to clearly reflect the Kansas taxable income of the affiliated group. Once a consolidated return is filed for a taxable year, consolidated returns shall be filed for all future years unless the group is not permitted to file a consolidated federal return. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-32,142; effective Jan. 1, 1968; amended May 1, 1982; amended May 1, 1987.)

92-12-53. Methods of determining income allocable to Kansas business. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or the rendering of purely personal services by an individual, shall allocate and apportion net income as provided in the "uniform division of income for tax purposes act" (K.S.A. 79-3271 *et seq.*). Non-business income shall be allocated according to the provisions of K.S.A. 79-3274 through 79-3278 and all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3). The three (3) factors are determined by the provisions of K.S.A. 79-3279 through 79-3287, and amendments thereto. This shall be the general rule to be followed in computing Kansas taxable income of taxpayers. The law also provides that if the allocation and apportionment provisions of this act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the secretary of revenue may require, in respect to all, or any part of the taxpayer's business activities, if reasonable, any of the methods set forth in K.S.A. 1980 Supp. 79-3288. These methods are the exceptions to the prescribed method and shall be allowed or used only in rare and ex-

ceptional cases and the burden of proving the exception which would warrant the use of any of the alternate methods rests upon the party who would invoke the exception. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3289, K.S.A. 1981 Supp. 79-3272, 79-3288; effective Jan. 1, 1968; amended May 1, 1975; amended May 1, 1982.)

92-12-54. (Authorized by K.S.A. 79-3236, 79-32,143; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-55. Returns; who shall file. (a) Copies of the prescribed return forms shall, so far as possible, be furnished to taxpayers. A taxpayer shall not be excused from making a return solely because a return form was not furnished. Each taxpayer shall carefully prepare the return so as to fully and clearly set forth the data called for. Imperfect or incorrect returns shall not be accepted as meeting the requirements of the act. The joint return of a husband and wife shall be signed by both spouses.

(b) Every corporation not expressly exempt from tax shall make a return of income regardless of the amount of its net income. In the case of ordinary corporations, the returns shall be made on form 120. A corporation having an existence during any portion of a taxable year shall be required to make a return. A corporation which has received a charter, but has never perfected its organization, which has transacted no business and had no income from any source, may, upon presentation of the facts to the director, be relieved from the necessity of making a return as long as it remains in an unorganized condition. In the absence of a proper showing to the director the corporation will be required to make a return. When called upon by the director, an exempt corporation shall render proof of its exemption.

(c) A receiver who stands in the stead of an individual or corporation shall render a return of income and pay the tax for the receiver's trust, but a receiver of only part of the property of an individual or corporation need not. If the receiver acts for an individual, the return shall be made on the same form the individual would be required to file. When acting for a corporation, a receiver is not treated as a fiduciary, and in this case the return shall be made as if by the corporation itself. A receiver in charge of the business of a partnership shall render a return on the same form the partnership would be required to file. A receiver

of the rents and profits appointed to hold and operate a mortgaged parcel of real estate, but not in control of all the property or business of the mortgagor, and a receiver in partition proceedings, shall not be required to render returns of income. In general, statutory receivers and common receivers of all the property or business of an individual or corporation shall make returns.

(d) A fiduciary acting as a guardian of a minor or an incompetent subject to Kansas income tax shall make a return for the person and pay the tax, unless in the case of a minor, the minor makes the return or causes it to be made. For the purpose of determining the liability of a fiduciary to render a return under the provisions of the preceding sentence where the minor or incompetent is married and was living with husband or wife at the close of the taxable year, it shall be the aggregate gross income of both husband and wife which is controlling.

(e) Every partnership shall make a return for each taxable year stating specifically the items of its gross income and the deductions allowed by the act. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-3220; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1982.)

92-12-56. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-3220; effective Jan. 1, 1968; amended May 1, 1982; revoked May 10, 2002.)

92-12-57. Records and income tax forms. Every person subject to the tax, except persons whose gross income consists solely of salary, wages, or similar compensation for personal services rendered, shall, for the purpose of enabling the director to determine the correct amount of income subject to tax, keep permanent books of account or records, including inventories, that are sufficient to establish the amount of the gross income and the deductions, credits, and other matters required to be shown in any return. These books or records shall be kept available at all times for inspection by agents or representatives of the director, and shall be retained so long as the contents may become material in the administration of this act. Income tax forms shall be prescribed by the director and shall be signed and filed in accordance with these regulations and the instructions on or issued with the form. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp.

79-3223; effective Jan. 1, 1968; amended May 1, 1982.)

92-12-58. Payment of tax; receipt; insufficient fund checks. (a) Upon request, a receipt shall be furnished by the director for each tax payment. In the case of payments made by check or money order, the cancelled check or the money order receipt shall be considered a sufficient receipt. For payments in cash, a receipt shall be furnished by the director if the taxpayer requests one.

(b) If payment is made by check and the check is returned for lack of funds or for any other reason, the taxpayer's account shall be treated as though a payment had not been made. If the check is not made good or the tax is not paid before the due date of the return, the return shall be considered as delinquent and penalties shall be added in accordance with K.S.A. 79-3228, and amendments thereto.

(c) All fees associated with the return of a check shall be the responsibility of the taxpayer. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3225; effective Jan. 1, 1968; amended May 1, 1982; amended May 10, 2002.)

92-12-59. (Authorized by K.S.A. 79-3226, 79-3236; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-60. (Authorized by K.S.A. 79-3226, 79-3236; effective Jan. 1, 1968; revoked, L. 1980, ch. 344, May 1, 1980.)

92-12-61. (Authorized by K.S.A. 79-3236; effective Jan. 1, 1968; amended Feb. 15, 1977; revoked May 1, 1982.)

92-12-62. (Authorized by K.S.A. 79-3228, 79-3236; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-63. (Authorized by K.S.A. 79-3229, 79-3236; effective Jan. 1, 1968; revoked May 1, 1982.)

92-12-64. Claims for refund by taxpayers. Claims by the taxpayer for the refunding of taxes, interest, penalties, and additions to tax erroneously or illegally collected shall set forth in detail and under oath the grounds upon which a refund is claimed and the facts which are sufficient to apprise the director of the exact basis of these grounds. Refund or credits shall not be allowed after the expiration of the statutory period

of limitation applicable to the filing of the claim, except upon one or more grounds set forth in a claim filed before the expiration of this period. A claim which does not comply with this regulation shall not be considered for any purpose as a claim for refund.

If a return is filed by an individual and a refund claim is then filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or similar evidence shall be annexed to the claim to show the authority of the executor, administrator, or other fiduciary, by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and then a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In these cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but shall be submitted only upon receipt of a specific request. If claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence shall accompany the claim. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-3230; effective Jan. 1, 1968; amended May 1, 1982.)

92-12-65. Powers of the director of taxation. The director or his or her delegate shall be permitted to examine any books, papers, records, or memoranda of a taxpayer for the purpose of determining the correctness of information contained in, or the existence of additional information that should be contained in, the taxpayer's returns. The director or his or her delegate may examine all the taxpayer's books, papers, records, or memoranda to determine which of these items are relevant to a determination of the taxpayer's tax liability. The determination of relevance shall not be made by the keeper of the books, papers, records, or memoranda. Books, papers, records, or memoranda which may be examined shall include, but not be limited to, the following: general ledgers and subordinate ledgers; general journals, and subordinate journals; computer printouts of any accounting or financial data; audit workpapers of company, internal auditor and independent auditor; annual reports with all supporting workpapers, schedules, and exhibits; SEC 10-K with all

supporting workpapers, schedules, and exhibits; cancelled checks; sales invoices; vendors invoices; time cards; deposit slips; bank statements; cash register tapes; inventory sheets; board of directors minutes and reports; audit committee minutes and reports; executive committee minutes and reports; internal company financial reports, statements and memoranda, with schedules and attachments; trial balances; employee lists; list of accounts receivable; capital asset ledgers and subordinate ledgers; depreciation ledgers and schedules; route schedules; bills of lading; shipping and receiving reports; weight tickets; work orders; job tickets; production reports; rents paid schedules; procedure manuals, operations manuals, employee manuals; table of organization; appraisal reports; property tax reports and receipts; federal income tax returns, and all schedules and attachments (pro forma and consolidated); all state tax returns, and all schedules and attachments; federal and state revenue agent adjustments reports; sales tax returns and all supporting workpapers; ad valorem tax returns and all supporting workpapers; intangible tax returns and all supporting workpapers; local occupation licenses; corporate charter; permits to do business as a foreign corporation; motor vehicle license returns to all appropriate states; special fuel licenses; cigarette licenses; liquor licenses; franchise agreements with supporting details; stock certificates ledger; security agreements; insurance policies; blueprints of plant facilities; patent agreements; royalty agreements; aging of accounts receivable; payroll journals and ledgers, W-2 forms; unemployment compensation ledgers; sales journals and subordinate details; accounts receivable ledger; bad debts workpapers; accounts payable ledger; computer cards; computer program guides; all lease agreements; lease-purchase agreements; apportionment workpapers—property, payroll, and sales workpapers by state and total company; management and personnel directory; director, officer and employee directory; list of articles and publications concerning company, its predecessors and subsidiary and affiliated corporations, which describes their development, operations and activities; travel vouchers and authorization; and internal memorandums. The director shall have the authority to issue interrogatories, subpoenas, and requests for production relating to disclosure of any of the information or items listed here. This authority may be exercised any time before or after an assessment has been made. (Au-

thorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-3233; effective Jan. 1, 1968; amended May 1, 1979; amended May 1, 1982.)

92-12-66. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3233a, 79-3233b; effective Jan. 1, 1968; amended May 1, 1975; amended May 1, 1982; revoked July 27, 2001.)

92-12-66a. Abatement of final tax liabilities. (a) General. The authority of the secretary to abate all or part of a final tax liability shall be exercised only in cases in which there is serious doubt as to either the collectability of the tax due or the accuracy of the final tax liability and the abatement is in the best interest of the state. This authority shall be exercised to effect the collection of taxes with the least possible loss or cost to the state and with fairness to the taxpayer. The determination of whether to abate all or part of a final tax liability shall be wholly discretionary.

(b) Definitions.

(1) "Assets" means the taxpayer's real and personal property, tangible and intangible.

(2) "Collectability" means the ability of the department of revenue to collect, and the ability of the taxpayer to pay, the tax liability.

(3) "Concealment of assets" means a placement of assets beyond the reach of the department of revenue, or a failure to disclose information relating to assets, that deceives the department with respect to the existence of the assets, whether accomplished by act, misrepresentation, silence, or suppression of the truth.

(4) "Final tax liability" means a tax liability that was established by the department to which the taxpayer has no further direct appeal rights.

(5) "Order denying abatement" means an order issued by the secretary that rejects a petition for abatement and refuses to abate any part of a final tax liability.

(6) "Order of abatement" means an order issued by the secretary that abates all or part of a final tax liability and states the reasons that this action was taken.

(7) "Parties" means either the person who requests an abatement of a final tax liability or the person's authorized representative, and either the secretary of revenue or the secretary's designee.

(8) "Secretary" means the secretary of the department of revenue or the designee of the secretary.

(9) "Serious doubt as to collectability" means the doubt that exists when a reasonable person,

viewing the controlling circumstances objectively, would conclude that the likelihood of recovering the liability is less than probable.

(10) "Serious doubt as to liability" means the doubt that exists when a reasonable person, viewing the controlling circumstances objectively, would conclude that it is probable that the final tax liability previously established by the department is greater than the actual tax liability imposed by the Kansas tax imposition statutes.

(11) "Tax" means the particular tax owed by the taxpayer and shall include any related interest and penalty.

(c) Factors affecting abatement.

(1) No final tax liability shall be abated on the ground of serious doubt as to liability if the taxpayer's liability for the tax has been established on the merits by a court judgment or decision of the board of tax appeals. No final tax liability shall be abated on the ground of serious doubt as to liability if the taxpayer has filed tax returns, absent a showing of the reporting errors on the returns.

(2) No tax liability shall be abated by the secretary if the taxpayer has acted with intent to defraud or to delay collection of tax. Frivolous petitions and petitions submitted only to delay collection of a tax shall be immediately rejected.

(d) Procedures.

(1) A petition for abatement shall be captioned "petition for abatement of a final tax liability" and shall be submitted to the secretary. The petition shall be signed by the petitioner and the taxpayer, if available, under the penalties of perjury, and shall include the following:

(A) The reasons why all or part of the final tax liability should be abated;

(B) the facts that support the abatement; and

(C) a waiver of the taxpayer's right of confidentiality under the confidentiality provisions of chapter 79 of the Kansas statutes annotated and amendments thereto, conditioned upon the secretary's abatement of all or part of the final tax liability.

(2) If a petition alleges serious doubt as to collectability, the taxpayer shall submit a statement of financial condition that lists assets and liabilities, accompanied by an affidavit signed by the preparer under the penalties of perjury, attesting that the financial statement is true and accurate to the best of the preparer's knowledge.

(3) After a petition has been submitted, the taxpayer shall provide any additional verified documentation that is requested by the secretary. The

petitioner or taxpayer may be required by the secretary to appear before the secretary and testify under oath concerning a requested abatement.

(4) A petition for abatement may be withdrawn by the taxpayer at any time before its acceptance. When a petition is denied, the taxpayer shall be promptly notified in writing by the secretary.

(5) An order of abatement that abates all or part of a final tax liability may be issued by the secretary. The order shall direct any remaining liability to be paid within 30 days. Any order of abatement shall set forth the reasons that the petition for abatement was granted and all relevant information, including the following:

- (i) The names of all parties;
- (ii) the amount and type of tax, interest, and penalties that were abated;
- (iii) the amount of tax, penalty, and interest that remain to be paid as of the date of the order; and
- (iv) the amount that has been paid, if any.

(6) The submission of a petition for abatement shall not operate to stay the collection of any tax.

(e) Effect of an order to abate all or part of a final tax liability. The secretary's order to abate all or part of a final tax liability shall relate to the entire liability of the taxpayer with respect to which the order is made, and shall conclusively settle the amount of liability. Once an order of abatement is issued, matters covered by the order shall not be reopened by court action or otherwise, except for one of the following reasons:

- (1) Falsification of statements or concealment of assets by the taxpayer;
- (2) mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside;
- (3) serious doubt as to collectability arising after an abatement order is issued that is based on serious doubt as to liability.

(f) Effect of waiver of confidentiality. The issuance of an order of abatement by the secretary for \$5,000 or more shall make all records of the abatement proceeding available for public inspection upon written request, in accordance with the statute and the taxpayer's express waiver of the right to confidentiality under the confidentiality provisions of chapter 79 of the Kansas statutes annotated and amendments thereto.

(g) Annual report. On or before the first day of September of each year, a summary of each petition of abatement that was granted during the preceding fiscal year that reduced a final tax liability by \$5,000 or more shall be prepared for filing with the secretary of state, the division of post

audit of the legislature, and the attorney general. Each summary shall include the following:

- (1) The names and addresses of the petitioner, and, if different, the taxpayer;
- (2) the amount of the disputed final tax liability;
- (3) the reasons for, conditions to, and amount of the abatement; and
- (4) the amount of any payment. (Authorized by K.S.A. 79-3236; implementing K.S.A. 2000 Supp. 79-3233, 79-3233a, and 79-3233b; effective July 27, 2001.)

92-12-67. Extension of time for filing returns. A six-month extension of time to file shall be granted by the director of taxation if at least 90% of the current year's tax liability is paid or 100% of the prior year's tax liability is paid. An extension of time to file shall not constitute an extension of time to pay. If the amount of tax due is not paid by the original due date, interest and penalty shall be assessed unless both of the following conditions are met:

(a) At least 90% of the tax liability is paid on or before the original due date.

(b) The balance of the tax and interest is paid with the return when it is filed. The appropriate Kansas payment voucher shall be submitted when paying the tax balance due for an extension of time to file. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3221; effective Jan. 1, 1968; amended Jan. 1, 1970; amended May 1, 1982; amended May 10, 2002.)

92-12-68. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3222; effective Jan. 1, 1968; amended Jan. 1, 1974; amended May 1, 1982; revoked May 10, 2002.)

92-12-69. (Authorized by K.S.A. 79-3236, K.S.A. 1979 Supp. 79-3220; effective Jan. 1, 1968; amended Jan. 1, 1970; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; revoked, L. 1980, ch. 344, May 1, 1980.)

92-12-70. (Authorized by K.S.A. 79-32,117a, 79-32,117b; effective Jan. 1, 1974; revoked May 1, 1982.)

92-12-71. Business and nonbusiness income defined. In essence, all income which arises from the conduct of trade or business operations of a taxpayer is business income. For administrative purposes, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., is of no aid in determining whether income is business or non-business income. Income of any type or class, and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is "business income" or "nonbusiness income" is the identification of the transactions and activity which are the elements of a particular trade or business. In general all transactions and activities of the taxpayer which are dependent upon or contribute to the operations of the taxpayer's economic enterprise as a whole, constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of, and will constitute integral parts of, a trade or business. (Authorized by K.S.A. 79-3236, 79-3271, 79-4301; effective May 1, 1979.)

92-12-72. Two or more businesses of a single taxpayer. A taxpayer may have more than one (1) "trade or business." In such cases, it is necessary to determine the business income attributable to each separate trade or business. The income of each business is then apportioned by an apportionment formula which takes into consideration the instate and outstate factors which relate to the trade or business the income of which is being apportioned.

The determination of whether the activities of the taxpayer constitute a single trade or business or more than one (1) trade or business will turn on the facts in each case. In general, the activities of the taxpayer will be considered a single business if there is evidence to indicate that the segments under consideration are integrated with, dependent upon, or contribute to each other and the operations of the taxpayer as a whole. The following factors are considered to be good indicia of a single trade or business, and the presence of any of these factors creates a strong presumption that the activities of the taxpayer constitute a single trade or business: (a) A taxpayer is generally engaged in a single trade or business when all of its activities are in the same general line.

(b) A taxpayer is almost always engaged in a single trade or business when its various divisions

or segments are engaged in different steps in a large, vertically structured enterprise.

(c) A taxpayer which might otherwise be considered as engaged in more than one (1) trade or business is properly considered as engaged in one (1) trade or business when there is a strong central management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Thus, some conglomerates may properly be considered as engaged in only one (1) trade or business when the central executive officers are normally involved in the operations of the various divisions and there are centralized offices which perform for the divisions the normal matters which a truly independent business would perform for itself, such as accounting, personnel, insurance, legal, purchasing, advertising, or financing. (Authorized by K.S.A. 79-3236, 79-3271, 79-4301; effective May 1, 1979.)

92-12-73. Business and nonbusiness income; application of definitions. The following are rules for determining whether particular income is business or nonbusiness income. (a) Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or incidental thereto and therefore is includable in the property factor.

(b) Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if such property was utilized for the production of nonbusiness income or otherwise was removed from the property factor before its sale, exchange or other disposition, the gain or loss will constitute nonbusiness income.

(c) Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations, or where the purpose for acquiring and holding the intangible is related to or incidental to such trade or business operations.

(d) Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and hold-

ing the stock is related to or incidental to such trade or business operations.

(e) Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is related to or incidental to such trade or business operations. (Authorized by K.S.A. 79-3236, 79-3271, 79-4301; effective May 1, 1979.)

92-12-74. Proration of deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business incomes of more than one (1) trade or business and to several items of nonbusiness income. In such cases the deduction shall be prorated among such trades or businesses and such items of nonbusiness income in a manner which fairly distributes the deduction among the classes of income to which it is applicable.

In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under the multistate tax compact or the uniform division of income for tax purposes act are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (Authorized by K.S.A. 79-3236, 79-3289, 79-32,141; effective May 1, 1979.)

92-12-75. Definitions. (a) Apportionment means the division of business income between states by the use of a formula containing apportionment factors.

(b) Allocation means the assignment of non-business income to a particular state.

(c) Business activity means the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer. (Authorized by K.S.A. 79-3236, 79-3271, 79-3272, 79-4301; effective May 1, 1979.)

92-12-76. Apportionment. If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined by apportionment in accordance with K.S.A. 79-3279. (Authorized by K.S.A. 79-3236, 79-3272, 79-3279, 79-4301; effective May 1, 1979.)

92-12-77. Combined income method of reporting. If a particular trade or business is carried on by a taxpayer and one (1) or more affiliated corporations, nothing in K.S.A. 79-3271 *et seq.*, and 79-4301, article IV or in these regulations shall preclude the use of a combined income method of reporting whereby the entire business income of such trade or business is apportioned in accordance with K.S.A. 79-3279 to 79-3287 and 79-4301, article IV.9 to IV.17. (Authorized by K.S.A. 79-3236, 79-3288, 79-32,141; effective May 1, 1979.)

92-12-78. Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with K.S.A. 79-3275 through 79-3278. (Authorized by K.S.A. 79-3236, 79-3272, 79-4301; effective May 1, 1979.)

92-12-79. Consistency and uniformity in reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under the multistate tax compact or the uniform division of income for tax purposes act are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (Authorized by K.S.A. 79-3236, 79-3289, 79-4301; effective May 1, 1979.)

92-12-80. Taxable in another state; in general. The taxpayer is subject to the allocation and apportionment if it has income from business activity that is taxable both within and without this

state. A taxpayer's income from business activity is taxable without this state if such taxpayer, by reason of such business activity (*i.e.*, the transactions and activity occurring in the regular course of a particular trade or business), is taxable in another state pursuant to K.S.A. 79-3273 and 79-4301, article IV.3.

A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in such other state pertaining to the production of non-business income or business activities relating to a separate trade or business. (Authorized by K.S.A. 79-3236, 79-3273, 79-4301; effective May 1, 1979.)

92-12-81. Taxable in another state; when a corporation is "subject to" a tax under K.S.A. 79-3273 (1) and 79-4301, article IV.3.(1). A taxpayer is "subject to" one (1) of the taxes, specified in K.S.A. 79-3273(1) and 79-4301, article IV.3.(1) if it carries on business activities in such state and such state imposes such a tax thereon. Any taxpayer which asserts that it is subject to one (1) of the taxes specified in K.S.A. 79-3273(1) or 79-4301, article IV.3.(1) in another state shall furnish to the director of taxation upon his request evidence to support such assertion. The director of taxation may request that such evidence include proof that the taxpayer has filed the requisite tax return in such other state and has paid any taxes imposed under the law of such other state; the taxpayer's failure to produce such proof may be taken into account in determining whether the taxpayer in fact is subject to one (1) of the taxes specified in K.S.A. 79-3273 and K.S.A. 79-4301, article IV.3.(1) in such other state.

If the taxpayer voluntarily files and pays one (1) or more of such taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization or for the privilege of doing business in that state, but (a) does not actually engage in business activity in that state, or

(b) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within such state, the taxpayer is not "subject to" one of the taxes specified within the meaning of K.S.A. 79-3273 and K.S.A. 79-4301, article IV.3.(1).

The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may

impose an income tax even though every state does not do so. In states which do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated in K.S.A. 79-3273 and 79-4301, article IV.3.(1) which may be considered as basically revenue raising rather than regulatory measures shall be considered in determining whether the taxpayer is "subject to" one of the taxes specified in K.S.A. 79-3273 and 79-4301, article IV.3.(1) in another state. (Authorized by K.S.A. 79-3236, 79-3273, 79-4301; effective May 1, 1979.)

92-12-82. Taxable in another state; when a state has jurisdiction to subject a taxpayer to a net income tax. The second test, that of K.S.A. 79-3273(2) and 79-4301, article IV.3.(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of such business activity under the constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U.S.C.A. Sections 381-385. In the case of any "state" as defined in K.S.A. 79-3271(h) and K.S.A. 79-4301, article IV.1.(h), other than a state of the United States or political subdivision of such state, the determination of whether such "state" has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that "state." If jurisdiction is otherwise present, such "state" is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States. (Authorized by K.S.A. 79-3236, 79-3273, 79-4301; effective May 1, 1979.)

92-12-83. Apportionment formula. All business income of each trade or business of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in K.S.A. 79-3279 and 79-4301, article IV.9. The elements of the apportionment formula are the property factor, the payroll factor and the sales factor of the trade or business of the taxpayer. (Authorized by K.S.A. 79-3236, 79-3279, 79-4301; effective May 1, 1979.)

92-12-84. Property factor; in general. The property factor of the apportionment formula for each trade or business of the taxpayer shall include all real and tangible personal property

owned or rented by the taxpayer and used during the tax period in the regular course of such trade or business. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency. Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of taxpayer's trade or business. The method of determining that portion of the value to be included in the factor will depend upon the facts of each case. The property factor shall include the average value of property includable in the factor. (Authorized by K.S.A. 79-3236, 79-3280, 79-4301; effective May 1, 1979.)

92-12-85. Property factor; property used for the production of business income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. Property or equipment under construction during the tax period, (except inventoriable goods in process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time (normally, five years) during which the property is held for sale. (Authorized by K.S.A. 79-3236, 79-3280, 79-4301; effective May 1, 1979.)

92-12-86. Property factor; consistency in reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns

for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the multistate tax compact or the uniform division of income for tax purposes act are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (Authorized by K.S.A. 79-3236, 79-3289, 79-4301; effective May 1, 1979.)

92-12-87. Property factor; numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed. (Authorized by K.S.A. 79-3236, 79-3280, 79-4301; effective May 1, 1979.)

92-12-88. Property factor; valuation of owned property. Property owned by the taxpayer shall be valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.

If original cost of property is unascertainable,

the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes. (Authorized by K.S.A. 79-3236, 79-3281, 79-4301; effective May 1, 1979.)

92-12-89. Property factor; valuation of rented property. Property rented by the taxpayer is valued at eight (8) times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer.

Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly there is no reduction in its value.

“Annual rental rate” means the amount paid as rental for property for a 12-month period (*i.e.*, the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the “annual rental rate” for the tax period. However, where a taxpayer has rented property for a term of twelve (12) or more months and the current tax period covers a period of less than twelve (12) months, the rent paid for the short tax period shall be annualized. If the rental term is for less than twelve (12) months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

“Annual rent” means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes: (a) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(b) Any amount payable as additional rental or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrange-

ment, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

“Annual rent” does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor. (Authorized by K.S.A. 79-3236, 79-3281, 79-4301; effective May 1, 1979.)

92-12-90. Property factor; averaging property values. As a general rule the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the director of taxation may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer’s property for the tax period.

Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property as set forth in K.A.R. 92-12-89. (Authorized by K.S.A. 79-3236, 79-3282, 79-4301; effective May 1, 1979.)

92-12-91. Payroll factor; in general. (a) The payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(b) The total amount “paid” to employees shall be determined upon the basis of the taxpayer’s accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer’s method of accounting, at the election of the tax-

payer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes.

(c) The compensation of any employee on account of activities which are connected with the production of nonbusiness income shall be excluded from the factor.

(d) The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee shall be excluded. Only amounts paid directly to employees shall be included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services when the amounts constitute income to the recipient under the federal internal revenue code. In the case of employees not subject to the federal internal revenue code such as those employed in foreign countries, the determination of whether the benefits or services would constitute income to the employees shall be made as though the employees were subject to the federal internal revenue code. The term "employee" means any officer of a corporation, or any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if the person is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the federal insurance contributions act; except that, since certain individuals are included within the term "employees" in the federal insurance contributions act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the federal insurance contributions act is not an employee for purposes of this regulation.

(e) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(f) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports

under the multistate tax compact or the uniform division of income for tax purposes act are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3283, 79-3289, 79-4301; effective May 1, 1979; amended May 1, 1986.)

92-12-92. Payroll factor; denominator.

The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272, is included in the denominator of the payroll factor. (Authorized by K.S.A. 79-3236, 79-3283, 79-4301; effective May 1, 1979.)

92-12-93. Payroll factor; numerator.

The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in K.S.A. 79-3284 and 79-4301, article IV.14. to be applied in determining whether compensation is paid in this state are derived from the model unemployment compensation act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded pursuant to this regulation, K.A.R. 92-12-91, 92-12-92 and 92-12-94. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes. (Authorized by K.S.A. 79-3236, 79-3283, 79-4301; effective May 1, 1979.)

92-12-94. Payroll factor; compensation paid in this state. Compensation is paid in this state if any of the following tests, applied consecutively, are met: (a) The employee's service is performed entirely within in the state.

(b) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word "inci-

dental” means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(c) If the employee’s services are performed both within and without this state, the employee’s compensation will be attributed to this state: (1) If the employee’s base of operations is in this state; or

(2) If there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(3) If the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee’s residence is in this state.

The term “place from which the service is directed or controlled” refers to the place from which the power to direct or control is exercised by the taxpayer.

The term “base of operations” is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer, or communications from his customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. (Authorized by K.S.A. 79-3236, 79-3284, 79-4301; effective May 1, 1979.)

92-12-95. Sales factor; in general. For the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term “sales” means all gross receipts derived by the taxpayer from transactions and activity in the regular course of such trade or business. The following are rules for determining “sales”: (a) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, “sales” includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such

sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

(b) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, “sales” includes the entire reimbursed cost, plus the fee.

(c) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, “sales” includes the gross receipts from the performance of such services including fees, commissions, and similar items.

(d) In the case of a taxpayer engaged in renting real or tangible property, “sales” includes the gross receipts from the rental, lease, or licensing the use of the property.

(e) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, “sales” includes the gross receipts therefrom.

(f) If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute “sales.”

In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer’s trade or business.

In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the multistate tax compact or the uniform division of income for tax purposes act are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (Authorized by K.S.A. 79-3236, 79-3285, 79-3288, 79-3289, 79-4301; effective May 1, 1979.)

92-12-96. Sales factor; denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under K.A.R. 92-12-103. (Authorized by

K.S.A. 79-3236, 79-3285, 79-4301; effective May 1, 1979.)

92-12-97. Sales factor; numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to such gross receipts, shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness. (Authorized by K.S.A. 79-3236, 79-3285, 79-4301; effective May 1, 1979.)

92-12-98. Sales factor; sales of tangible personal property in this state. Gross receipts from sales of tangible personal property (except sales to the United States government) are in this state: (a) If the property is delivered or shipped to a purchaser within this state regardless of the free on board point or other conditions of sale; or (b) If the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in this state, the sales are in this state.

If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by

a third party to the purchaser, the following rules apply: (a) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.

(b) If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state. (Authorized by K.S.A. 79-3236, 79-3286, 79-4301; effective May 1, 1979.)

92-12-99. Sales factor; sales of tangible personal property to United States government in this state. Gross receipts from sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this regulation, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government. (Authorized by K.S.A. 79-3236, 79-3286, 79-4301; effective May 1, 1979.)

92-12-100. Sales factor; sales other than sales of tangible personal property in this state. (a) Gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government) are attributed to this state if the income producing activity which gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state, if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Such activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, income producing activity includes but is not limited to the following: (1) The rendering of personal services by employees or the utilization of tangible and

intangible property by the taxpayer in performing a service.

(2) The sale, rental, leasing, licensing or other use of real property.

(3) The rental, leasing, licensing or other use of tangible personal property.

(4) The sale, licensing or other use of intangible personal property.

The mere holding of intangible personal property is not, of itself, an income producing activity.

The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(b) The following are special rules for determining when receipts from the income producing activities described below are in this state: (1) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(2) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period.

(3) Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of such services shall be attributable to this state only if a greater proportion of the services was performed in the state, based on costs of performance. Usually, where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income producing activity; in such case the gross receipts for the performance of services attributable to this state shall be measured by the ratio which the time spent in performing such services in this state bears to the total time spent

in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations. (Authorized by K.S.A. 79-3236, 79-3287, 79-4301; effective May 1, 1979.)

92-12-101. Special rules; in general. K.S.A. 79-3288 and 79-4301, article IV.18. permit a departure from the allocation and apportionment provisions of K.S.A. 79-3271 *et seq.*, and 79-4301, article IV in limited and specific cases. This regulation may be invoked in specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the apportionment and allocation provisions contained in K.S.A. 79-3271 *et seq.*, and 79-4301, article IV.

In the absence of unusual fact situations, the director of taxation may, in his discretion, establish appropriate procedures to determine the apportionment factors for any industry when it is found that the apportionment and allocation provisions of K.S.A. 79-3271 *et seq.*, and 79-4301, article IV do not adequately represent the extent of the taxpayer's business activity in this state, but such procedures shall be applied uniformly within any such industry. (Authorized by K.S.A. 79-3236, 79-3288, 79-4301; effective May 1, 1979.)

92-12-102. Special rules; property factor. The following special rules are established in respect to the property factor of the apportionment formula: (a) If the subrents taken into account in determining the net annual rental rate under K.A.R. 92-12-89 produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the director of taxation or requested by the taxpayer.

In no case however shall such value be less than an amount which bears the same ratio to the annual rental rate paid by the taxpayer for such property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.

(b) If property owned by others is used by the taxpayer at no charge, or rented by the taxpayer for a nominal rate, the net annual rental rate for such property shall be determined on the basis of

a reasonable market rental rate for such property. (Authorized by K.S.A. 79-3236, 79-3288, 79-4301; effective May 1, 1979.)

92-12-103. Special rules; sales factor.

The following special rules are established in respect to the sales factor of the apportionment formula: (a) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, such gross receipts shall be excluded from the sales factor.

(b) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless such exclusion would materially affect the amount of income apportioned to this state.

(c) Where the income producing activity in respect to business income from intangible personal property can be readily identified, such income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well.

Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, such income cannot be assigned to the numerator of the sales factor for any states and shall be excluded from the denominator of the sales factor. (Authorized by K.S.A. 79-3236, 79-3288, 79-4301; effective May 1, 1979.)

92-12-104. (Authorized by K.S.A. 79-3236, 79-3291; effective May 1, 1979; revoked May 1, 1982.)

92-12-105. Contribution to income; debtor setoff.

(a) As used in K.S.A. 75-6202, and amendments thereto, "contribution to income" shall mean that portion of the income of a spouse filing a joint return that is subject to withholding, or that can be otherwise determined, from information filed with the return, to have been received by that spouse individually. Income that cannot be determined, from information filed with the Kansas income tax return, to have been received by either spouse individually shall be considered attributable to each spouse at the ratio of the income that has been determined to have been received individually by each spouse to the total income of both spouses. If the amount reported as Kansas adjusted gross income does not include income subject to Kansas tax received by either spouse individually, this amount shall be

considered to have been contributed equally by each spouse.

(b) The amount of the refund shall be adjusted to properly reflect the debtor's contribution to income if the debtor proves either of the following:

(1) Any of the income attributed to the debtor was received by the debtor's spouse individually and should not have been attributed to the debtor for the purpose of determining contribution to income.

(2) Any of the income attributed wholly or partly to the debtor's spouse should have been attributed to the debtor.

(c) Income shall not be attributed to either spouse individually unless the debtor proves either of the following:

(1) Only one spouse had an ownership interest in the source of the income at the time it was received.

(2) In the case of earned income not subject to Kansas withholding tax, the income was earned solely by one spouse.

If the debtor proves that the proportionate ownership interest in an income source is not the same as the ratio determined under subsection (a), the amount of refund shall be adjusted accordingly.

(d) Questions regarding the proper computation of contribution to income as specified in this regulation may be raised at the hearing provided for in K.S.A. 75-6207, and amendments thereto. (Authorized by K.S.A. 75-6203; implementing K.S.A. 2000 Supp. 75-6202; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended May 10, 2002.)

92-12-106. Composite returns for non-resident partners and shareholders.

(a) Any partnership or S corporation required to file a return under the Kansas income tax act may file a composite income tax return for all nonresident partners or nonresident shareholders that derive income from the partnership or S corporation. Nonresident partners and nonresident shareholders included in a composite return shall not file a separate income tax return.

(b) Any nonresident partner or nonresident shareholder may be included in a composite return unless the partner or shareholder has income from a Kansas source other than the partnership or S corporation.

(c) Each composite return shall list the name, address, social security number, and the percent-

age of ownership of each nonresident partner or nonresident shareholder.

(d) Each composite return shall be filed and any tax due paid by the partnership or S corporation on or before the 15th day of the fourth month following the close of the taxable year of the partnership or S corporation.

(e) Each return shall be filed in the manner specified by the director of taxation.

(f) Trusts shall not be included in a composite return. Each trust shall file a separate income tax return on a form provided by the director. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3220; effective May 1, 1988; amended May 10, 2002.)

92-12-107 and 92-12-108. Reserved.

92-12-109. Report of income adjusted by internal revenue service. The revenue agent's report detailing adjustments made by the internal revenue service and the amended return reporting these adjustments to the director shall be sent separate from any other document except those required by this regulation. If federal taxable income, in the case of a corporation, or federal adjusted gross income, in the case of an individual, on the Kansas income tax return as originally filed is not the same as reported on the revenue agent's report, a reconciliation and explanation as to the difference shall also be submitted. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-3230; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982.)

92-12-110. Combined income method of reporting; surtax exemption. Each corporation filing a Kansas income tax return using the combined income method of reporting with more than one entity of the combined group doing business in Kansas, may report the total Kansas combined income and pay the tax due by filing one Kansas income tax return. When a corporation uses this method for a taxable year, the corporation shall continue to use this method for all future years or as long as the Kansas combined return is utilized. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3220; effective May 1, 1987.)

92-12-111. Special rules; airlines. (a) Apportionment of business income. When an airline has income from sources both within and without the state of Kansas, the amount of business income from sources within the state of Kan-

sas shall be determined pursuant to this regulation.

(b) The following definitions are applicable to the terms used in the apportionment factor descriptions:

(1) "Value of owned real and tangible personal property" shall mean its original cost.

(2) "Cost of aircraft by type" means the average original cost or value of aircraft by type which are ready for flight.

(3) "Original cost" means the initial federal tax basis of the property plus the value of capital improvements to such property, except, for this purpose, it shall be presumed that safe harbor leases are not true leases and do not affect the original initial federal tax basis of the property.

(4) "Average value" of property means the amount determined by averaging the values at the beginning and end of the income year. However, the department of revenue may require the averaging of monthly values during the income year if averaging is necessary to reflect properly the average value of the airline's property.

(5) The "value of rented real and tangible personal property" means the product of eight times the net annual rental rate.

(6) "Net annual rental rate" means the annual rental rate paid by the taxpayer.

(7) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(8) "Aircraft ready for flight" means aircraft owned or acquired through rental or lease, except for an interchange, which are in the possession of the taxpayer and are available for service on the taxpayer routes.

(9) "Revenue service" means the use of aircraft ready for flight for the production of revenue.

(10) "Transportation revenue" means revenue earned by transporting passengers, freight and mail as well as revenue earned from such things as liquor sales and pet crate rentals.

(11) "Departures" means all takeoffs, whether they are regularly scheduled or charter flights, that occur during revenue service.

(c) Property factor. (1) Owned aircraft shall be valued at its original cost and rented aircraft shall be valued at eight times the net annual rental rate. The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier will not constitute a rental of the aircraft by the airline to the other participating airline. The air-

craft used in an interchange program shall be accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, shall be valued at cost.

(2) The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible property owned or rented and used in the state of Kansas during the income year. To determine the numerator of the property factor, all property except aircraft ready for flight shall be included in the numerator of the property factor. Aircraft ready for flight shall be included in the numerator of the property factor in the ratio calculated as follows: Departures of aircraft from locations in the state of Kansas weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.

(d) Payroll factor. (1) The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. The numerator of the payroll factor is the total amount paid in the state of Kansas during the income year by the taxpayer for compensation.

(2) Compensation paid to non-flight employees shall be included in the numerator as provided in K.A.R. 92-12-93 and 92-12-94. Compensation to flight personnel, including the air crew aboard an aircraft which assist in the operations of the aircraft or the welfare of the passengers while in the air, shall be included in the ratio that departures of aircraft from locations in the state of Kansas, weighted as to the cost and value of aircraft by type compared to total departures similarly weighted, multiplied by the total flight personnel compensation.

(e) Sales factor. (1) The transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise are included in the denominator of the revenue factor. Passive income items, including but not limited to items such as interest, rental income, dividends, and proceeds, shall not be included in the denominator. Proceeds and net gains or losses from sales of an aircraft shall not be included in the denominator.

(2) The numerator of the revenue factor is the total revenue of the taxpayer in the state of Kansas

during the income year. The total revenue of the taxpayer in Kansas during the income year is the result of the following calculation: The ratio of departures of aircraft in Kansas weighted as to the cost and value of aircraft by type, as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any non-flight revenues directly attributable to the state of Kansas.

(f) The taxpayer shall maintain the records necessary to arrive at departures by type of aircraft as used in these regulations. These records are subject to review by the department of revenue. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3288; effective May 1, 1987.)

92-12-112. Sales factor numerator; assignment of sales of a corporation which is a member of a unitary group of corporations.

(a) The Kansas destination sales of tangible property of a corporation shall be assigned to the Kansas sales factor numerator if the Kansas activity of any unitary group member exceeds the solicitation of orders.

(b) Sales made by a corporation from a Kansas location into a state where the activity of any unitary group member exceeds the solicitation of orders shall be excluded from the Kansas sales factor numerator.

(c) The accounting method in this regulation shall be utilized prospectively for the taxable years beginning after December 31, 1990. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3285, 79-3286; effective June 1, 1992.)

92-12-113. Credit for property tax paid on commercial and industrial machinery and equipment; tax receipts.

(a) If the amount of the business machinery and equipment credit claimed by a taxpayer on credit schedule K-64 is more than \$500, the taxpayer shall submit a copy of each property tax receipt issued by a county treasurer, showing timely payment of the personal property tax on the commercial and industrial machinery and equipment for which the tax credit is sought. Each taxpayer claiming the business machinery and equipment credit for property taxes paid on railroad machinery and equipment shall submit the documentation provided to that taxpayer by the division of property valuation of the Kansas department of revenue specifying the value of the railroad machinery and equipment on which this credit is calculated and a copy of each

supporting tax receipt issued by a county treasurer.

(b) The property tax receipts and documentation specified in subsection (a) shall not be required to be submitted with the taxpayer's credit schedule K-64 if the amount of the credit claimed by the taxpayer is \$500 or less.

(c) Each taxpayer claiming the business machinery and equipment credit shall retain, as part of the taxpayer's records, each property tax receipt and any other document substantiating the claim. (Authorized by K.S.A. 79-3236; implementing K.S.A. 2004 Supp. 79-32,206; effective April 22, 2005.)

92-12-114. Determining transportation income within a unitary group. If a unitary group of corporations consists of one or more corporations engaged in railroad or interstate motor carrier operations, including the interstate transport of persons or property for hire by rail or motor carrier, and one or more corporations not engaged in railroad or interstate motor carrier operations, the following method shall be used to determine the apportionable income of the group members engaged in railroad or interstate motor carrier operations.

(a) A three-factor formula consisting of property, payroll, and sales shall be used to divide the apportionable business income of the unitary group between each corporation engaged in railroad or interstate motor carrier operations and all other members of the unitary group. The apportionment factor numerators shall consist of the property, payroll, and sales of each corporation engaged in railroad or interstate motor carrier operations. The apportionment factor denominators shall consist of the property, payroll, and sales of the entire unitary group. For purposes of this subsection, the property, payroll, and sales factors shall be as defined in the uniform division of income for tax purposes act, K.S.A. 79-3271 et seq., and amendments thereto, and the regulations promulgated under this act.

(b) The apportionable business income of each corporation engaged in railroad or interstate motor carrier operations shall be determined by multiplying the apportionable business income of the unitary group by the fraction computed according to subsection (a).

(c) The apportionable business income of each corporation engaged in railroad or interstate motor carrier operations as determined according to

subsection (b) shall then be apportioned to this state by using the single-factor mileage formula set forth in K.S.A. 79-3279(a), and amendments thereto.

(d) The apportionable business income of each corporation in the unitary group that is not engaged in railroad or interstate motor carrier operations shall be determined by subtracting the amount determined in subsection (b) from the apportionable business income of the unitary group.

(e) The apportionable business income of each corporation in the unitary group that is not engaged in railroad or interstate motor carrier operations, as determined in subsection (d), shall be apportioned to this state by using the applicable apportionment formula specified in K.S.A. 79-3279(b), and amendments thereto. (Authorized by K.S.A. 2007 Supp. 75-5155; implementing K.S.A. 79-32,141; effective June 20, 2008.)

92-12-120. Definition of qualified taxpayer. A "qualified taxpayer," as defined in K.S.A. 79-32,211(b)(4) and amendments thereto, shall not be considered to be a "community service organization," as defined in K.S.A. 79-32,195(d) and amendments thereto. (Authorized by K.S.A. 2004 Supp. 75-5155; implementing K.S.A. 2004 Supp. 79-32,211; effective March 24, 2006.)

92-12-121. Incurred qualified expenditures. Before a qualified taxpayer may qualify for a credit allowed under K.S.A. 79-32,211, and amendments thereto, both of the following conditions shall have been met: (a) The qualified taxpayer has incurred "qualified expenditures," as defined in K.S.A. 79-32,211(b) and amendments thereto, for the restoration and preservation of a qualified historic structure; and

(b) either the qualified expenditures have been paid in full or the qualified taxpayer has entered into a legal document that outlines the scope of the restoration and preservation work and identifies the date by which the qualified expenditures are to be paid in full by the qualified taxpayer. (Authorized by K.S.A. 2005 Supp. 75-5155; implementing K.S.A. 2005 Supp. 79-32,211; effective March 24, 2006.)

92-12-130. Amount of tax credit. For each employer that has established a "small employer health benefit plan" or made any contributions to the "health savings account" of an "eligible employee," as these terms are defined in

K.S.A. 40-2239 and amendments thereto, after December 31, 2004, the amount of tax credit allowed shall be the following: (a) For the first 12 months of the employer's participation, the lesser of the following:

(1) \$70 per month for each eligible employee; or

(2) the actual amount paid by the employer per month for each eligible employee;

(b) for the second 12 months of the employer's participation, the lesser of the following:

(1) \$50 per month for each eligible employee; or

(2) the actual amount paid by the employer per month for each eligible employee; and

(c) for the third 12 months of the employer's participation, the lesser of the following:

(1) \$35 per month for each eligible employee; or

(2) the actual amount paid by the employer for each month per eligible employee. (Authorized by and implementing K.S.A. 40-2246, as amended by L. 2005, ch. 118, §4; effective March 24, 2006.)

92-12-140. Definitions. (a) "Contribution" shall include the donation of cash, stocks and bonds, personal property, or real estate.

(1) Stocks and bonds shall be valued at the stock market price on the date of the transfer.

(2) Personal property shall be valued at the lesser of its fair market value or cost to the donor. The value may be inclusive of costs incurred in making the contribution but shall not include sales tax. If the donor received the personal property as a gift or inheritance and the item is considered a rare and valuable antique or work of art, an independent appraisal may be necessary in determining fair market value.

(3) Contributions of real estate shall be allowable for credit if title to the real estate is in fee simple absolute and is clear of any encumbrances. The amount of credit allowable for contributions of real estate shall be based upon the lesser of two current independent appraisals conducted by state licensed appraisers.

(4) Contributions of stocks and bonds shall be converted into cash and deposited within 14 days of receipt of the donation into the capital outlay fund of a community college, the deferred maintenance fund or a technology and equipment fund of a technical college, or the deferred maintenance support fund of a postsecondary educational institution.

(5) Contributions of personal property shall be converted into cash and deposited within six months of the donation into the capital outlay fund of a community college, the deferred maintenance fund or a technology and equipment fund of a technical college, or the deferred maintenance support fund of a postsecondary educational institution.

(6) Contributions of real property shall be converted into cash and deposited within 18 months of the donation into the capital outlay fund of a community college, the deferred maintenance fund or a technology and equipment fund of a technical college, or the deferred maintenance support fund of a postsecondary educational institution.

(b) "Contributor" shall mean an individual, business entity, or not-for-profit entity that makes a contribution to an educational institution or the educational institution's endowment association or foundation.

(c) "Educational institution" shall mean any of the following:

(1) A community college as defined in K.S.A. 79-32,261(d)(1) and amendments thereto;

(2) a technical college as defined in K.S.A. 79-32,261(d)(4) and amendments thereto;

(3) a state educational institution as defined in K.S.A. 76-711 and amendments thereto; or

(4) Washburn university of Topeka.

(d) "Endowment association" and "foundation" shall mean either of the following:

(1) An entity designated as the investing agent for a state educational institution pursuant to K.S.A. 76-156a and amendments thereto; or

(2) an entity dedicated to securing financial support for Washburn university of Topeka, any community college as defined in K.S.A. 79-32,261(d)(1) and amendments thereto, or any technical college as defined in K.S.A. 79-32,261(d)(4) and amendments thereto.

(e) "Secretary" shall mean the secretary of revenue or the secretary's designee. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective June 20, 2008.)

92-12-141. Tax credit agreement. (a) The chief executive officer of each educational institution for which an allocation of tax credits has been authorized pursuant to K.S.A. 79-32,261, and amendments thereto, shall enter into an annual tax credit agreement with the secretary for the educational institution's allocation of tax cred-

its. The tax credit agreement shall provide the following information:

(1) The name of the educational institution and, if applicable, the name of the educational institution's endowment association or foundation;

(2) the amount of tax credits to be allocated to the institution in the calendar year;

(3) the time period during which donations may be accepted by the educational institution to qualify for tax credits; and

(4) any other relevant information that the secretary requires.

(b) A new tax credit agreement shall be entered into by the secretary with each educational institution for which an allocation of tax credits has been authorized pursuant to K.S.A. 79-32,261, and amendments thereto, at least two months before the beginning of each calendar year for which the tax credits are available. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective June 20, 2008.)

92-12-142. Tax credit application. (a) Each contributor making a contribution to an educational institution, or to an endowment association or foundation on behalf of the educational institution, shall complete a tax credit application with the educational institution, endowment association, or foundation on a form furnished by the secretary. The application may be filed by electronic means in a manner approved by the secretary. Each application shall include the following information:

(1) The name, address, and either the employer identification number or the social security number of the contributor;

(2) if the contributor is an S-corporation, a partnership, or a limited liability company, the following information:

(A) The name of each shareholder, partner, or member;

(B) the employer identification number or social security number of each shareholder, partner, or member; and

(C) each shareholder's, partner's, or member's proportionate share of the income or loss of the corporation, partnership, or limited liability company;

(3) the name of the educational institution or the endowment association or foundation to which the contribution is being made and the fund in which the contribution will be deposited;

(4) the amount and form of the contribution;

(5) the date of the contribution; and

(6) any other relevant information that the secretary requires.

(b) The chief executive officer of the educational institution, endowment association, or foundation shall submit the completed tax credit application and supporting documentation to the secretary for review. The educational institution, endowment association, or foundation shall receive written notification from the secretary when the application is approved or denied. The chief executive officer of the educational institution, endowment association, or foundation shall provide a copy of this approval or denial to the contributor that has made the contribution. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective June 20, 2008.)

92-12-143. Quarterly reports. The chief executive officer of each educational institution shall submit or cause to be submitted a quarterly report indicating the amount of contributions qualifying for tax credits. This report shall be submitted to the secretary on a form furnished by the secretary. Any quarterly report may be filed by electronic means in a manner approved by the secretary. A quarterly report shall be submitted on or before the tenth day following the end of each calendar quarter even if no qualifying contributions are received in that quarter. Each quarterly report shall include the following information:

(a) The name and either the employer identification number or the social security number of each contributor in that quarter;

(b) the amount and form of each contribution received in that quarter;

(c) the total amount of qualified tax credits based on the contributions received in that quarter;

(d) the total amount of credits that remain from the educational institution's annual allocation; and

(e) any other relevant information that the secretary requires. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective June 20, 2008.)

92-12-144. Reallocation of credits. (a) If a community college or technical college does not receive contributions sufficient to generate qualifying tax credits for the full amount of the annual allocation in the tax credit agreement, those remaining tax credits shall not be reallocated to another community college or technical college. All

tax credits remaining in the allocation for which contributions have not been received by the college shall be considered void at the end of the applicable calendar year.

(b) (1) At the end of the third calendar quarter, the tax credits of a state educational institution and Washburn university of Topeka may be reclaimed by the secretary if the secretary determines that there are no anticipated contributors for the institution's remaining tax credits. The chief executive officer of the state educational institution or Washburn university of Topeka shall send a written notice to the secretary with the quarterly report due for the third calendar quarter, indicating the amount of unclaimed tax credits and an anticipated contribution schedule. The anticipated contribution schedule shall indicate the following information:

(A) The name of each anticipated contributor;
 (B) the amount of each anticipated contribution; and

(C) the anticipated date on which each contribution is to be made.

(2) Within 30 calendar days after the deadline for response of the state educational institution or Washburn university of Topeka, the tax credits still remaining within an allocation may be reclaimed from the institution by the secretary. These credits may be reallocated to Washburn university of Topeka or another state educational institution by the secretary of revenue and the board of regents.

(c) Each state educational institution or Washburn university of Topeka that receives reallocated tax credits shall be required to receive qualifying contributions for the reallocated tax credits within that same calendar year. All reallocated tax credits for which qualifying contributions were not received by the institution shall be considered void at the end of the applicable calendar year. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective June 20, 2008.)

92-12-145. Transfer of tax credits. (a) Any tax credits earned by a contributor not subject to Kansas income, privilege, or premiums tax may be transferred to any taxpayer that is subject to Kansas income, privilege, or premiums tax. These tax credits shall be transferred only one time. The transferee shall claim the tax credit against the transferee's tax liability in the tax year of the transfer.

(b) The transferor and transferee shall execute

a written transfer agreement to transfer the tax credit. The agreement shall include the following information:

(1) The name and either the employer identification number or the social security number of the transferor;

(2) the name and either the employer identification number or the social security number of the transferee;

(3) the date of the transfer;

(4) the date the contribution was made by the transferor;

(5) the amount of tax credit transferred;

(6) the amount that will be received by the transferor for the tax credit transferred; and

(7) any other relevant information that the secretary requires.

(c) Each transfer agreement shall be reviewed by the secretary. If the transfer agreement is approved, a certificate of transfer shall be issued to the transferor and transferee indicating approval of the transfer. If the transfer agreement is denied, written notification of the denial shall be issued to the transferor and transferee. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective June 20, 2008.)

Article 12a.—SOLAR TAX INCENTIVES

92-12a-1, 92-12a-2. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-3. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-4. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-5. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-32,166, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-6. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-32,166, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; modified, L. 1983 ch. 368, May 1, 1983; revoked March 29, 2002.)

92-12a-7. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-32,166, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-8. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-32,166, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; modified, L. 1983 ch. 368, May 1, 1983; revoked March 29, 2002.)

92-12a-9, 92-12a-10. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-32,166, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-11. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-12. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-13. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-14. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-15. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-1118, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-16. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-17. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-1118, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-18. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-19. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-1118, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-20. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-21, 92-12a-22. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

92-12a-23. (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-32,166, 79-32,167; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

Article 13.—INTERSTATE MOTOR FUEL USE TAX

92-13-1. Application; contents. All applications for an interstate motor fuel user license shall be on forms furnished by the director and shall contain information as follows:

- (a) The name and address of the applicant.
- (b) The principal office or place of business of the applicant.
- (c) If a corporation, the names and addresses of the principal officers.
- (d) The financial condition of the applicant.
- (e) A description of applicant's operations.

(f) Such other information as the director shall require. (Authorized by K.S.A. 1971 Supp. 79-34,115, 79-34,123; effective Jan. 1, 1966; amended Jan. 1, 1972.)

92-13-2. Interstate motor fuel user license. Upon investigation by the director, if the statements contained in the application shall be found to be true, and if the director shall be satisfied that the application is made in good faith, he shall issue to said applicant an interstate motor fuel user license specifying the terms and conditions thereof: *Provided, however,* That no license issued by the director shall be subject to assignment or transfer, nor shall such be construed to be either a franchise or irrevocable: *Provided further,* That all importer for use licenses in force January 1, 1972, and all interstate motor fuel user licenses issued by the director on or after January 1, 1972, shall be in force as interstate motor fuel user licenses so long as the holder has in force a bond as required by law or rules and regulations, or until such license is suspended, surrendered, or revoked for cause by the director. (Authorized by K.S.A. 1971 Supp. 79-34-115, 79-34-123; effective Jan. 1, 1966; amended Jan. 1, 1972.)

92-13-3. Enforcement. The director may at any time, upon showing of failure to comply with the provisions of the motor fuels tax laws of the state of Kansas or rules and regulations promulgated thereunder, or of the motor carrier inspection bureau relating to motor carriers, suspend or completely revoke any license or registration upon giving the grantee thereof five days notice and an opportunity to be heard. (Authorized by K.S.A. 79-3403, 79-3430, 79-3473; effective Jan. 1, 1966; amended, E-80-2, Jan. 18, 1979; amended May 1, 1979.)

92-13-4. Identification cards. It shall be the duty of all interstate motor fuel users and drivers of motor vehicles registered under an interstate motor fuel user license to at all times carry on every vehicle used an identification fuel card issued by the director identifying the licensee.

Each such identification fuel card shall carry the number of the interstate motor fuel user license under which it was issued.

Identification fuel cards shall be held available for inspection by duly authorized representatives of the director of revenue, the state department of revenue, the motor carrier inspection bureau, the state highway patrol, and law enforcement of-

icers. (Authorized by K.S.A. 79-34,115, 79-34,123; effective Jan. 1, 1966; amended Jan. 1, 1972; amended, E-80-2, Jan. 18, 1979; amended May 1, 1979.)

92-13-5. Revocation or abandonment of license, authorization or permit. (1) Whenever operations are abandoned under any interstate motor fuel user license, or upon revocation thereof by the director, the license and all identification fuel cards issued thereunder shall be immediately forwarded to the director. (2) Whenever the director orders operations suspended under any license, permit or authorization the interstate motor fuel user shall immediately remove all identification fuel cards, permits or authorizations from all vehicles for which they were issued. Such identification fuel cards, permits and authorizations shall be preserved by the interstate motor fuel user who shall, at the request of the director, immediately forward the same to the director. (Authorized by K.S.A. 1971 Supp. 79-34,121, 79-34,123; effective Jan. 1, 1966; amended Jan. 1, 1972.)

92-13-6. Credits and refunds on fuel purchased within Kansas. All applications for refund shall be made on forms prescribed by the director and shall contain satisfactory and sufficient information to establish the right to such refund. (Authorized by K.S.A. 1971 Supp. 79-34,123, 79-34,112; effective Jan. 1, 1966; amended Jan. 1, 1972.)

92-13-7. Sales invoices and records. Every interstate motor fuel user registered under this act shall be required to retain for three years sales invoices and other records reflecting purchases of fuels both within and without the state of Kansas unless destruction is authorized by the director in writing. The sales invoices of the vendor shall be machine printed or stamped and shall show the following: Name and station address of seller; name and address of purchaser; date of sale; number of gallons purchased; type of product; state tax rate charged; the company unit number or motor vehicle unit license number of the power unit. The invoices shall be prepared over double faced carbon except in the case of credit card purchases. (Authorized by K.S.A. 1971 Supp. 79-34-113, 79-34,123; effective Jan. 1, 1966; amended Jan. 1, 1972.)

92-13-8. Exempt operations. Every person hauling campers, trailers or personal automobiles for nonbusiness purposes shall be exempt

from the provisions of this act. (Authorized by K.S.A. 1971 Supp. 79-34,123; effective Jan. 1, 1966; amended Jan. 1, 1972.)

92-13-9. Motor fuel permits and emergency authorization. (a) Both 24-hour and 72-hour motor fuel permits shall be issued on forms prescribed by the director. Any interstate motor fuel user may request not more than three motor fuel permits for each commercial motor vehicle identification number (VIN) at the same time. Each interstate motor fuel user requesting a motor fuel permit shall submit the requested information and the applicable fee payment to a designee of the secretary of revenue at a motor carrier inspection station or at any other location where a designee of the secretary is located. Each requested motor fuel permit shall be issued or denied by the secretary's designee.

(b) Any interstate motor fuel user may operate a commercial motor vehicle in the state without a motor fuel permit by authorization of the director if the secretary of revenue determines that an emergency has arisen. The highway patrol, motor carrier inspectors, and other appropriate personnel shall be notified by the director of the emergency situation and the time frame for the emergency authorization. (Authorized by and implementing K.S.A. 2005 Supp. 79-34,118, as amended by L. 2006, Ch. 119, § 1, K.S.A. 79-34,119, and K.S.A. 79-34,123; effective Jan. 1, 1966; amended Jan. 1, 1972; amended, E-80-2, Jan. 18, 1979; amended May 1, 1979; amended Nov. 17, 2006.)

92-13-10. Bond requirements. The director of taxation may require any person making application for an interstate motor fuel users license in the state of Kansas to file a bond with the director when: (1) the licensee has failed to file timely a quarterly report; (2) the correct amount of tax has not been remitted with the report; (3) an audit indicates, that in the discretion of the director, a bond is required to protect the interest of the state; or (4) the licensee is based in a state not a member of the international fuel tax agreement. (Authorized by K.S.A. 79-34,123, implementing K.S.A. 79-34,116; effective Jan. 1, 1966; amended Jan. 1, 1972; amended May 1, 1988.)

92-13-11. Presumption, evidence. In the absence of records or other information showing the number of miles actually traveled per gallon of fuel, it shall be presumed that one gallon of

motor vehicle fuel was consumed for every three miles traveled; that one gallon of special fuel was consumed for every 3.5 miles traveled and that one gallon of liquefied petroleum fuel was consumed for every 2.5 miles traveled. (Authorized by K.S.A. 79-34,123; implementing K.S.A. 79-34,109, 79-34,124; effective Jan. 1, 1972; amended May 1, 1987.)

92-13-12. Record requirements; presumption. (a) Each interstate motor fuel user shall maintain detailed records for each trip for a minimum of three years. The records shall be summarized monthly and include miles traveled and fuel purchased over the road for each vehicle. These records shall also disclose:

- (1) trip origin and destination;
- (2) route of travel;
- (3) sales invoices, including:
 - (A) name and station address of seller;
 - (B) name and address of purchaser;
 - (C) date of sale;
 - (D) number of gallons purchased;
 - (E) type of product; and
 - (F) company unit number or motor vehicle unit license number; and
- (4) number of gallons purchased for over the road purposes.

Each interstate motor fuel user shall preserve these records, together with all fuel purchase invoices, in a manner to insure their security and availability for inspection by agents or representatives of the director.

(b) If an interstate motor fuel user fails to comply with any record keeping requirement, the director, or the director's authorized agent, shall make a jeopardy assessment based on any available information. An assessment made pursuant to this regulation shall be presumed to be correct. The burden shall be on the interstate motor fuel user to establish, by a preponderance of evidence, that an assessment is inaccurate. (Authorized by 79-34,123; implementing K.S.A. 79-34,113, effective May 1, 1987.)

Article 14.—LIQUEFIED PETROLEUM FUEL TAX

92-14-1. (Authorized by K.S.A. 79-3492, 79-34,102; effective Jan. 1, 1966; revoked, E-73-20, July 1, 1973; revoked Jan. 1, 1974.)

92-14-2. (Authorized by K.S.A. 79-3495,

79-34,102; effective Jan. 1, 1966; revoked, E-73-20, July 1, 1973; revoked Jan. 1, 1974.)

92-14-3. (Authorized by K.S.A. 79-3493, 79-34,102; effective Jan. 1, 1966; revoked, E-73-20, July 1, 1973; revoked Jan. 1, 1974.)

92-14-4. LP gas withdrawn from a motor vehicle's cargo tank and used to propel the vehicle on public highways. If LP gas from the cargo tank of a motor vehicle is used to propel the vehicle on public highways, the LP-gas user shall maintain an accurate record of the amount of LP gas consumed for highway use, unless taxes have been paid in advance or the vehicle is operating on a mileage basis as provided for by the liquefied petroleum motor fuel tax law, K.S.A. 79-3490 et seq. and amendments thereto. The records that show consumption shall be maintained for three years. If the director finds that the records do not accurately reflect the amount of fuel consumed for highway use, the tax owed shall be computed by the director based on the best evidence available, and the LP-gas dealer or user shall be required by the director to report and pay the tax on a mileage basis in the future. (Authorized by K.S.A. 79-34,102; implementing K.S.A. 2000 Supp. 79-3491a, as amended by L. 2001, Ch. 5, § 456, K.S.A. 79-3492, 79-3497, 79-3499; effective, E-73-20, July 1, 1973; effective Jan. 1, 1974; amended March 29, 2002.)

92-14-5. Records. (a) Each LP-gas dealer shall maintain records showing the receipts from all LP-gas fuel sales and the tax collected thereon for three years. The records shall identify each sale made to an LP-gas permit user and shall include the user's permit number. The records shall document all purchases made by the LP-gas dealer, including those for the dealer's use and for resale.

(b) Each LP-gas user shall maintain records of LP-gas purchases for three years. The records shall include all purchase invoices issued to the purchaser.

(c) Each LP-gas dealer and wholesaler shall, at the time of sale and delivery, issue an invoice to the buyer that contains the following information:

- (1) The date of the sale;
- (2) the names and addresses of the seller and buyer;
- (3) the place of delivery;
- (4) the number of gallons of LP gas sold; and
- (5) if the sale is at retail, the amount of tax col-

lected or the buyer's special LP-gas user permit number. (Authorized by K.S.A. 79-34,102; implementing K.S.A. 2000 Supp. 79-3491a, as amended by L. 2001, Ch. 5, § 456, K.S.A. 79-3492, 79-3499; effective, E-73-20, July 1, 1973; effective Jan. 1, 1974; amended March 29, 2002.)

92-14-6. Sales of LP gas to special LP-gas permit users; use of special LP-gas permit user decals. (a) Each operator of any motor vehicle that bears a Kansas special permit LP-gas user decal shall either self-report tax on the use of LP gas on a mileage basis or pay the tax in advance, as provided by K.S.A. 79-3492a through K.S.A. 79-3492c, and amendments thereto. LP-gas dealers who deliver gas into the tanks of vehicles that bear permit decals shall not collect tax on the sales, but shall record the user's permit number and name on the sales invoice.

(b) Except as provided in subsection (c), if a motor vehicle that is authorized to operate under a special LP-gas user permit is destroyed, sold, traded or otherwise disposed of before the end of a calendar year, or if for any other reason the permit holder removes the decal from the vehicle, the permit holder shall immediately notify the director of taxation in writing of the nature of the vehicle transfer or the destruction of the decal. Failure to remove a permit decal from a vehicle that has been disposed of and to notify the director shall be grounds for cancellation of the authorization to operate on a mileage basis.

(c) If a permit holder sells a vehicle that is registered for LP-gas purposes to another permit holder or to a person who is applying for a permit, the purchaser may request the transfer of the permit, decal, and all other related rights and obligations to the purchaser. This transfer may be authorized by the director.

(d) If taxes have been paid in advance on a motor vehicle that is destroyed, sold, traded, otherwise disposed of, or converted from LP-gas use before the first of December in any year, the permit holder may apply for a refund of the taxes.

(e) Special LP-gas permit user decals shall be issued on a calendar year basis. The decals shall be placed inside on the lower driver's side of the windshield. (Authorized by K.S.A. 79-34,102; implementing K.S.A. 2000 Supp. 79-3491a, as amended by L. 2001, Ch. 5, § 456, K.S.A. 79-3492a, K.S.A. 2000 Supp. 79-3492b, K.S.A. 79-3492c, 79-3492d; effective, E-73-20, July 1, 1973; effective Jan. 1, 1974; amended March 29, 2002.)

92-14-7. Special LP-gas permits. In determining if the taxes paid in advance by a special LP-gas permit user are wholly inadequate as provided by K.S.A. 79-3492c and amendments thereto, the taxes paid in advance by other permit holders on similar motor vehicles may be taken into consideration by the director of taxation. (Authorized by K.S.A. 79-34,102; implementing K.S.A. 79-3492c; effective, E-73-20, July 1, 1973; effective Jan. 1, 1974; amended March 29, 2002.)

92-14-8. License applications; bond requirements. (a) Each individual, partnership, and corporation that applies for a liquefied petroleum gas license shall post a bond equal to its three months' average tax liability. New businesses shall estimate their tax liability for one year and submit a bond in an amount equal to 25 percent of the estimated annual liability, or \$1,000, whichever is greater. A license shall not be granted until the bond requirements are met.

(b) Bond requirements shall be satisfied by surety bonds executed by an approved corporate surety, escrow agreements entered into using department forms, or cash bonds posted with the department.

(c) The bond requirement may be reduced by the director to \$1,000 if a certified financial statement indicating a net worth in excess of one year's average tax liability is submitted. The required bond may be reduced by the director to an amount equal to two months' tax liability, but not less than \$1,000, in consideration of a satisfactory reporting history for the prior 12 months in which there were no returned checks or other delinquencies.

(d) Motor fuel tax bonds and financial statements may be reviewed periodically by the department. An additional bond or a current certified financial statement may be required by the director if the existing bond or net worth shown on the financial statement is less than the current average three months' tax liability. (Authorized by K.S.A. 79-34,102; implementing K.S.A. 79-3496; effective May 1, 1979; amended March 29, 2002.)

92-14-9. Taxation of compressed natural gas; conversion formula. For purposes of converting the amount of compressed natural gas measured in cubic feet to the gallon basis used to tax LP-gas motor fuel tax, 120 cubic feet of compressed natural gas shall equal one gallon. (Authorized by K.S.A. 79-34,102; implementing

K.S.A. 79-3490, 79-3492; effective May 1, 1982; amended May 1, 1983; amended March 29, 2002.)

Article 15.—NONRESIDENT CONTRACTORS

92-15-1. (Authorized by K.S.A. 79-1008, 79-1014; effective Jan. 1, 1968; revoked May 1, 1983.)

92-15-2. (Authorized by K.S.A. 1968 Supp. 79-1009, 79-1014; effective Jan. 1, 1968; amended Jan. 1, 1969; revoked May 1, 1983.)

92-15-3. Change of name, address, or ownership. Each nonresident contractor shall perform each contract under the same name used to register the contract for purposes of K.S.A. 79-1008 et seq. and amendments thereto, unless the contractor secures and provides the department with a rider to the bond that shows the change of the business name. A rider shall not be used and shall not be accepted by the department if a business changes from operating as one kind of legal entity to another, including from a sole proprietorship to a corporation. Each nonresident contractor shall immediately report any change of name, address, or ownership to the secretary of revenue. (Authorized by K.S.A. 79-1014; implementing K.S.A. 79-1010; effective Jan. 1, 1968; amended March 29, 2002.)

92-15-4. Registration not assignable. The registration of a contract shall not be assigned or transferred to a different legal entity and shall be used only by the person, partnership, corporation, or other legal entity that the registration identifies as the person or entity that is performing the contract. Each assignment or transfer of the contract to a different legal entity, including to a successor entity that operates under the same business name, shall terminate registration of the contract and shall require the new entity to apply for a new registration and secure a new bond. (Authorized by K.S.A. 79-1014; implementing K.S.A. 79-1010; effective Jan. 1, 1968; amended March 29, 2002.)

92-15-5. (Authorized by K.S.A. 1968 Supp. 79-1010, 79-1014; effective Jan. 1, 1968; amended Jan. 1, 1969; revoked May 1, 1983.)

92-15-6. Bond; time in effect. Each nonresident contractor's bond required under K.S.A. 79-1010, and amendments thereto, shall be the equivalent of an annual bond that covers only

those contracts begun during the calendar year in which the bond is filed. This bond shall remain in effect until all contracts registered during the calendar year in which the bond was filed are fully performed and all taxes due under it are paid. (Authorized by K.S.A. 79-1014, 79-1010; effective Jan. 1, 1968; amended July 27, 2001.)

92-15-7. (Authorized by K.S.A. 1968 Supp. 79-1010, 79-1014; effective Jan. 1, 1968; amended Jan. 1, 1969; revoked May 1, 1983.)

92-15-8. Bond; release. The bond required under K.S.A. 79-1008 et seq., and amendments thereto, shall be released only after the contract or contracts secured by the bond are fully performed and the secretary of revenue has received the following written releases: (a) A certification from the secretary of human resources that all contributions and interest due from the nonresident contractor under the employment security law have been paid; and

(b) a certification from the county treasurer of each county where the nonresident contractor performed the contract or contracts under the bond, that all taxes accruing because of the performance of the contract or contracts have been paid, or that no taxes are due. (Authorized by K.S.A. 79-1014; implementing K.S.A. 79-1010; effective Jan. 1, 1968; amended March 29, 2002.)

92-15-9 to 92-15-12. (Authorized by K.S.A. 79-1010 *et seq.*; effective Jan. 1, 1968; revoked May 1, 1983.)

Article 16.—INTANGIBLES TAX

92-16-1. (Authorized by K.S.A. 1975 Supp. 79-3109a, 79-3111, 79-3112, 79-3113b; effective Jan. 1 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1975; amended May 1, 1976; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-2. (Authorized by K.S.A. 1975 Supp. 79-3111, 79-3113b, 79-3120a; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1976; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-3. (Authorized by K.S.A. 1973 Supp. 79-3111, 79-3113a, 79-3113b; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended

Jan. 1, 1972; amended Jan. 1, 1974; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-4. (Authorized by K.S.A. 79-3111, 79-3113b; effective Jan. 1, 1968; amended Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-5. (Authorized by K.S.A. 1975 Supp. 79-3108, 79-3109, 79-3109a, 79-3112, 79-3113b; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; amended May 1, 1976; revoked, E-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-6. (Authorized by K.S.A. 79-3101, K.S.A. 1975 Supp. 79-3102, 79-3108, 79-3111, 79-3113b, 79-3120a; effective Jan. 1, 1968; amended Jan. 1, 1969; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; amended May 1, 1975; modified, L. 1976, ch. 420, May 1, 1976; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-7. (Authorized by K.S.A. 79-3108, 79-3113b; effective Jan. 1, 1968; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-8. (Authorized by K.S.A. 79-3113b, K.S.A. 1971 Supp. 79-3108; effective Jan. 1, 1968; amended Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-9. (Authorized by K.S.A. 79-3113b, K.S.A. 1971 Supp. 79-3109; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-10 and 92-16-11. (Authorized by K.S.A. 79-3113b; effective Jan. 1, 1968; revoked, E-71-8, Jan. 1, 1971; revoked Jan. 1, 1972.)

92-16-12 and 92-16-13. (Authorized by K.S.A. 79-3113b, K.S.A. 1971 Supp. 79-3109a; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-14. (Authorized by K.S.A. 79-3113b; effective Jan. 1, 1968; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-15. (Authorized by K.S.A. 79-3113b, 79-304; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-16. (Authorized by K.S.A. 79-3113b,

79-3115; effective Jan. 1, 1968; revoked, E-71-8, Jan. 1, 1971; revoked Jan. 1, 1972.)

92-16-17. (Authorized by K.S.A. 79-3113b, 79-3115; effective Jan. 1, 1968; revoked Jan. 1, 1972.)

92-16-18. (Authorized by K.S.A. 79-3113b, 79-3115; effective Jan. 1, 1968; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-19. (Authorized by K.S.A. 79-3114, K.S.A. 1974 Supp. 79-3111, 79-3113b; effective Jan. 1, 1968; amended May 1, 1975; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-16-20 and 92-16-21. (Authorized by K.S.A. 79-3113b, K.S.A. 1971 Supp. 79-3109a; effective Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

Article 17.—TOBACCO PRODUCTS

92-17-1. Terms; distributor, retailer.

(a)(1) Each person engaged in the business of selling tobacco products in this state who brings or causes to be brought into this state from without the state any tobacco products for sale shall be deemed a distributor unless that person is a retailer who has purchased tobacco products on a tax-paid basis from a licensed distributor.

(2) Each person who has one or more retail outlets and who brings or causes to be brought into this state from without the state tobacco products for sale by one of the retail outlets shall be deemed a distributor; however, the retail outlet from which the tobacco products are sold to the ultimate consumer shall be a retailer.

(b) Each person within the state, including a retailer, who purchases tobacco products upon which the tax has been unpaid from sources out of the state and brings those products into the state for resale shall be required to purchase a distributor's license and shall be responsible for the tax due on the products. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3373; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.)

92-17-2. Imposition of tax. (a) The tax imposed by the cigarette and tobacco products law shall be paid by the distributor who first performs any of the following:

(1) Brings or causes to be brought into this state from outside the state tobacco products for sale;

(2) makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(3) ships or transports tobacco products to retailers in this state to be sold by those retailers.

(b) Liability for the tax shall accrue at the time tobacco products are first brought into the state from outside the state for sale within the state. Each person causing tobacco products to be brought into this state upon which the tax has been unpaid shall be responsible for the payment of the tax on those products.

(c) A transfer from one distributor to another shall not relieve the distributor who first brought or caused the tobacco products to be brought into this state from the tax liability. Therefore, a tax credit shall not be taken on tobacco tax returns for any transfers made within this state. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3371; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.)

92-17-3. Applications; forms. Each person required by the cigarette and tobacco products act to be licensed as a distributor shall make application for a license on a form furnished by the director.

All questions on the application shall be answered completely. Answers shall be printed legibly in ink or typed. The application shall be signed and acknowledged by the applicant or an officer of the applicant.

Each license shall be granted with the understanding that the license is a grant from the state to one particular individual, partnership, or corporation and is not transferable from one owner to another. If any member of a partnership dies, sells, or transfers the member's interest in the partnership, the license shall become null and void. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3373, 79-3375; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.)

92-17-4. Distributor's bond. Each application for a "tobacco products" distributor's license shall be accompanied by a corporate surety bond submitted on forms prescribed by the director and issued by a surety licensed to do business in the state of Kansas. The bond shall list each place of business at which the distributor proposes to engage in business under the cigarette and tobacco products act. The minimum amount of the required bond shall be \$1,000.00 for each place of business and shall be conditioned upon

compliance with the provisions of K.S.A. 79-3301 *et seq.* and amendments thereto, and the payment of all taxes, penalties, and accrued interest due the state of Kansas. The bond shall be kept in effect during the entire period of the license. Whenever it is the opinion of the director that the bond is inadequate in amount to fully protect the state, an additional bond shall be required by the director in an amount that the director deems sufficient. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3374; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.)

92-17-5. Bond; cancellations. The surety on a bond furnished by a tobacco products distributor as required by the cigarette and tobacco products act shall be released and discharged from any liability to the state accruing on that bond after the expiration of 60 days from the date upon which the surety has submitted to the director a written request to be released and discharged, but this requirement shall not operate to relieve, release, or discharge the surety from any liability that has already accrued or that will accrue before the expiration of the 60-day period.

The tobacco products distributor who furnished the bond shall be promptly notified by the director upon receipt of the request. If the distributor, on or before the expiration of the 60-day period, fails to file with the director a new bond fully complying with the provisions of the tobacco products law, the license or licenses of the distributor shall be revoked and canceled by the director. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3374, 79-3375; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.)

92-17-6. Refund or credit of tax-exempt tobacco products. A Kansas tobacco products distributor may present a claim for refund of or claim for credit for the tobacco products tax paid on tobacco products sold to the United States government or an instrumentality of it that is exempt from the Kansas tobacco products tax on a form approved by the director.

Each Kansas tobacco products distributor shall present evidence acceptable to the director certifying that the sale of tobacco products for which a claim for refund or claim for credit is filed was made by the Kansas distributor to the United States government or an instrumentality of it that is exempt from the Kansas tobacco products tax.

Each distributor selling tobacco products to the

United States government or an instrumentality of it that is exempt from the Kansas tobacco products tax shall submit a report to the division of taxation for refund or credit of tobacco products sold in the preceding calendar month. The report shall provide the sales slips in serial number order signed by the receiving officer. The sales slips shall designate the club, armed forces exchange, or other instrumentality of the United States government buying exempt tobacco products. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3379; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.)

Article 18.—SPECIAL FUEL TAX

92-18-1. (Authorized by K.S.A. 79-3475, 79-3483; effective, E-69-16, July 23, 1969; effective Jan. 1, 1970; revoked Aug. 23, 2002.)

92-18-2, 92-18-3. (Authorized by K.S.A. 79-3480, 79-3483; effective, E-69-16, July 23, 1969; effective Jan. 1, 1970; revoked Aug. 23, 2002.)

92-18-4. (Authorized by K.S.A. 1978 Supp. 79-3478; effective May 1, 1979; revoked Aug. 23, 2002.)

92-18-5. (Authorized by K.S.A. 79-3483, K.S.A. 1982 Supp. 79-3479a; implementing K.S.A. 1982 Supp. 79-3479b; effective, T-83-48, Dec. 22, 1982; effective May 1, 1983; revoked Aug. 23, 2002.)

92-18-6. (Authorized by K.S.A. 79-3483, K.S.A. 1982 Supp. 79-3479a; implementing K.S.A. 1982 Supp. 79-3479a, 79-3479b; effective, T-83-48, Dec. 22, 1982; effective May 1, 1983; revoked Aug. 23, 2002.)

92-18-7. (Authorized by K.S.A. 79-3483; implementing K.S.A. 79-3481, 79-3483; effective May 1, 1987; revoked Aug. 23, 2002.)

Article 19.—KANSAS RETAILERS' SALES TAX

92-19-1. (Authorized by K.S.A. 79-3618, 79-3619; implementing K.S.A. 79-3619, K.S.A. 1982 Supp. 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1983; revoked May 1, 1987.)

92-19-1a. (Authorized by K.S.A. 79-3618, 79-3619; implementing K.S.A. 79-3619, K.S.A.

79-3603, as amended by L. 1986, Ch. 386, Sec. 1; effective May 1, 1987; revoked June 26, 1998.)

92-19-1b. Collection schedules for state and local sales tax. (a) Except as provided in K.S.A. 12-189a, and amendments thereto, Kansas retailers shall charge and collect sales tax on each taxable retail sale at a combined tax rate equal to the sum of the state tax rate established by K.S.A. 79-3603, and amendments thereto, plus any applicable local tax rate established under K.S.A. 12-187, and amendments thereto.

(b) Tax collection schedules for each of the combined sales tax rates shall be published by the department and given to retailers upon request.

(c) The state and local sales tax to be charged to a consumer shall be computed by multiplying the selling price by the applicable combined tax rate in effect. Each retailer using machine or computer billings shall use a straight percentage basis for calculating the tax on its billings. If the calculation of the sales tax to be charged results in a fraction of a cent, the tax liability shall be rounded up or down to the nearest whole cent. If the fraction is an even one-half cent, the liability shall be rounded to the next highest whole cent. No tax shall be charged to a consumer when the calculation of the tax to be charged totals less than one-half cent.

(d) The sales tax payable to the department by a retailer shall be the product of the applicable combined state and local tax rate multiplied by the retailer's taxable gross receipts, regardless of the amount that is collected from consumers by use of the authorized method for computing taxes. (Authorized by K.S.A. 1997 Supp. 12-189, K.S.A. 79-3618 and 79-3619; implementing K.S.A. 1997 Supp. 12-187 and 12-189, K.S.A. 12-189a, 79-3603, and 79-3619; effective June 26, 1998.)

92-19-2. (Authorized by K.S.A. 79-3608, 79-3618, K.S.A. 1971 Supp. 79-3602; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked Aug. 23, 2002.)

92-19-2a. Registration certificates.

(a)(1) Every person who is required to collect retailers' sales tax under the act shall secure a sales tax registration certificate from the department of revenue before engaging in business or opening a new place of business in this state. As used in this regulation, "sales tax registration certificate," "registration certificate," and "certificate" shall mean the document that evidences the registra-

tion with the department and is required by K.S.A. 79-3608, and amendments thereto.

(2) Each retailer, before making retail sales of tangible personal property or performing taxable services in this state, shall secure a sales tax registration certificate. A certificate shall not be issued for any purpose other than to make retail sales of tangible personal property or to perform taxable services. A certificate shall be valid until the retailer ceases doing business or the certificate is canceled by the department. Certificates shall be issued and amended without charge.

(3) Failure to secure a certificate shall subject a retailer who engages in a taxable retail business to criminal or civil sanctions, or both. The failure to secure a certificate shall not relieve a retailer from either the obligation to properly collect, remit, and account for sales tax or the obligation to maintain complete records of all transactions in the manner required by law.

(4) Each retailer shall file a separate application and secure a separate certificate for each place of business. Any retailer that operates at more than one location under the same ownership may request permission to file that retailer's tax returns on a combined or consolidated basis.

(5)(A) Each retailer maintaining a public place of business in Kansas shall display the registration certificate in a conspicuous location so that the certificate can be readily seen and read by the public. If a retailer maintains more than one place of business, a certificate shall be displayed at each location.

(B) Each retailer who operates at a special event or at any other temporary location, including from a truck, wagon, portable stand, or other merchandising device, shall prominently display the certificate so that it can be readily seen and read by the public. Transient retailers who do not operate from such a merchandising device shall have their certificates in their possession and shall display them upon request.

(6) A certificate shall be valid only for use by the individual, partnership, corporation, or association in whose name it is issued and for the transaction of business at the place designated on the certificate. A certificate shall not be assigned or transferred. If there is a change in ownership or a change in the name or location of a business, the certificate shall no longer be valid. A new certificate shall be obtained, and the old certificate shall be returned to the department for cancella-

tion whenever there is a change in ownership, business location, or name of a business.

(7) Each wholesaler, distributor, and manufacturer that makes retail sales, including sales to employees, shall secure a registration certificate and report these sales to the department. To simplify reporting, the wholesaler, distributor, or manufacturer may set up a retail division to report the retail sales. Transfers of inventory to the retail division for resale shall be exempt sales for resale, and the sales tax returns shall reflect only the sales made by the retail division to final consumers.

(b)(1) Each trustee, receiver, executor, administrator, and other fiduciary who by virtue of the appointment continues to operate, manage, control, or liquidate a retail business shall report and remit sales tax on the gross receipts received by the business and from liquidation of the business's inventory items. These reporting duties shall apply to each court-appointed fiduciary, whether appointed by a state or federal court.

(2) A certificate of a retail business that is being managed by a fiduciary that was valid at the time the fiduciary relationship was created shall continue to be valid to allow the fiduciary to conduct the business for a reasonable time before the transfer of ownership or to close out the business when probating an estate or liquidating the assets of the business.

(3) Each trustee, receiver, executor, administrator, and other fiduciary who engages in liquidating the inventory of a business that does not have an existing registration certificate under which to report sales tax shall secure a certificate and shall report tax on taxable receipts from sales of inventory items and taxable services.

(c) Only a business that is actively engaged in making retail sales or performing taxable services that are subject to Kansas sales tax may hold a registration certificate. A registration certificate may be cancelled by the director if during any prior consecutive 12-month period the certificate holder does not file a return or, if any returns are filed, does not report any taxable transactions. When a certificate is to be cancelled, the certificate holder shall be notified in writing of the director's intention to cancel the certificate and the date when the cancellation is final. The certificate shall be cancelled on the date set forth in the notice, unless the certificate holder objects in writing within 60 days from the date that the notice of intention to cancel is mailed. If a certificate holder objects to cancellation, a hearing shall be sched-

uled pursuant to the Kansas administrative procedures act to determine whether the certificate holder is actively engaged in a retail business.

(d)(1) Issuance of a sales tax registration certificate may be refused by the department, if the department ascertains any of the following:

(A) The department has issued an unsatisfied tax warrant against a partner, business owner, corporate officer, or majority stockholder of the business that is applying for the certificate.

(B) There is a pending department administrative action or legal proceeding against a partner, business owner, corporate officer, or majority stockholder of the business that is applying for the certificate which claims that the partner, business owner, corporate officer, or majority stockholder is a responsible person who is liable for payment of taxes pursuant to K.S.A. 79-2971, K.S.A. 79-32,106, or K.S.A. 79-3643, and amendments thereto.

(C) The applicant is an agent or representative of a principal that is required to be registered and is responsible for filing sales tax returns, pursuant to K.S.A. 79-3604, and amendments thereto.

(2) If the department ascertains that a certificate was issued at a time when the certificate could have been denied under paragraph (d)(1)(A), (B), or (C), the certificate may be cancelled by the department. When such a certificate is cancelled, the certificate holder shall be notified in writing of the director's intention to cancel the certificate and the date when the cancellation is final. The certificate shall be cancelled on the date specified in the notice, unless the certificate holder objects in writing within 60 days from the date that the notice of intention to cancel is mailed. If a certificate holder objects to cancellation, a hearing shall be scheduled by the secretary or designee pursuant to the Kansas administrative procedures act to determine whether there were adequate grounds under paragraph (d)(1)(A), (B), or (C) to refuse to issue the certificate. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 79-3607, 79-3608, K.S.A. 2001 Supp. 79-3615, and K.S.A. 79-3630; effective Aug. 23, 2002.)

92-19-3. Credit, conditional, and installment sales. (a) When a retailer makes credit, conditional, or installment sales, the retailer may pay tax on the total amount of collections made during each reporting period or, if the retailer's books are regularly kept on an accrual basis, on

the total amount of sales accrued for each reporting period. When the retailer adopts one basis of reporting for sales tax purposes, the retailer shall not change from that basis without first obtaining the permission of the director of taxation.

(b) If the retailer adopts the accrual basis for reporting taxable sales, the retailer shall account for all periodic adjustments to reported bad debts, including the final adjustment when debts are charged off the retailer's books for federal income tax purposes. If any portion of the bad debts is recovered after the final adjustment, the retailer shall include the recovery and tax in the next sales tax return.

(c) When tangible personal property or taxable services are sold on deferred payments and the deferred payments are covered by a negotiable note or notes or an assignable conditional sales contract, the retailer shall remit the tax on the total selling price of the property or service at the time the sale is made and report it in the retailer's next sales tax return.

(d) Interest, finance, or carrying charges on installment sales shall not be taxable when these charges are separately made and shown by the retailer on bills rendered to the consumer. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3602, 79-3607, 79-3609; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; amended June 26, 1998.)

92-19-4. (Authorized by K.S.A. 79-3609, 79-3618; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1987.)

92-19-4a. (Authorized by K.S.A. 79-3618, 79-3707; implementing K.S.A. 79-3609, K.S.A. 79-3706; effective May 1, 1987; revoked July 27, 2001.)

92-19-4b. Recordkeeping requirements.

(a) Purpose. Each taxpayer shall maintain the books, records, and other information required to be maintained by the Kansas retailers' sales tax act in accordance with this regulation.

(b) Definitions. For purposes of this regulation, these terms shall be defined as follows:

(1) "Database management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) "Director" means the director of taxation of

the department of revenue or the director's designee.

(3) "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

(4) "Hard copy" means any documents, records, reports, or other data printed on paper.

(5) "Machine-sensible record" means a collection of related information in an electronic format. This term shall not include hard-copy records that are created or recorded on paper or stored in or by an imaging system, including microfilm, microfiche, and storage-only imaging systems.

(6) "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. This term shall not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

(7) "Taxpayer" means any person who is obligated to account to the director of taxation for taxes collected or accrued under the Kansas retailers' sales tax act.

(c) Recordkeeping requirements: general.

(1) Each taxpayer shall maintain all records that are necessary to determine the correct tax liability under Kansas sales and compensating tax acts. All required records shall be made available on request by the director as provided for in K.S.A. 79-3609, and amendments thereto. These records shall include the following:

(A) Invoices;

(B) bills of lading;

(C) sales records;

(D) copies of bills of sale;

(E) exemption certificates;

(F) a true and complete inventory taken at least once a year; and

(G) all other pertinent documents that establish gross receipts from sales, as well as any deductions allowed by law or claimed on returns.

(2) If a taxpayer retains records that are required to be retained under this regulation in both machine-sensible and hard-copy formats, that individual shall make the records available to the director in machine-sensible format upon request of the director.

(3) Nothing in this regulation shall be construed to prohibit any taxpayer from demonstrating tax

compliance with traditional hard-copy documents or reproductions of them, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records using electronic or other storage media in accordance with this regulation. However, this subsection shall not relieve the taxpayer of the obligation to comply with paragraph (c)(2).

(d) Recordkeeping requirements: machine-sensible records.

(1) General requirements.

(A) Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the director upon request. Any taxpayer may discard duplicated records and redundant information if the taxpayer's responsibilities under this regulation are met.

(B) At the time of an examination, the retained records shall be capable of being retrieved and converted to a standard record format.

(C) Taxpayers shall not be required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business shall not be required to construct the record in an electronic format for tax purposes.

(2) Electronic data interchange requirements.

(A) If a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, shall be equivalent to that contained in an acceptable paper record. The retained records shall contain the following information:

- (i) The vendor name;
- (ii) the invoice date;
- (iii) a product description;
- (iv) the quantity purchased;
- (v) the price;
- (vi) the amount of tax;
- (vii) an indication of tax status;
- (viii) the shipping detail; and
- (ix) any other information required by the secretary.

Codes may be used to identify some or all of the data elements, if the taxpayer provides a method that allows the director to interpret the coded information.

(B) The taxpayer may capture the information

necessary to satisfy the requirements of paragraph (d)(2)(A) at any level within the accounting system and shall not be required to retain the original EDI transaction records if the audit trail, authenticity, and integrity of the retained records can be established.

(3) Electronic data processing systems requirements. The requirements for an electronic data processing accounting system shall be similar to those for a manual accounting system, in that an adequately designed accounting system shall incorporate methods and records that will satisfy the requirements of this regulation.

(4) Business process information.

(A) Upon the request of the director, the taxpayer shall provide a description of the business process that created the retained records. This description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

(B) Each taxpayer shall be capable of demonstrating the following:

- (i) The functions being performed as they relate to the flow of data through the system;
- (ii) the internal controls used to ensure accurate and reliable processing; and
- (iii) the internal controls used to prevent the unauthorized addition, alteration, or deletion of retained records.

(C) The following documentation shall be required for machine-sensible records retained as specified in this regulation:

- (i) Record formats or layouts;
 - (ii) field definitions, including the meaning of all codes used to represent information;
 - (iii) file descriptions, including the data set name; and
 - (iv) detailed charts of accounts and account descriptions.
- (e) Records maintenance requirements.

(1) The taxpayer shall adequately catalog and preserve electronic and other retained machine-sensible records.

(2) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

(f) Access to machine-sensible records.

(1) The manner in which the director is provided access to machine-sensible records as required in paragraph (c)(2) may be satisfied through a variety of means, each of which shall

take into account the taxpayer's facts and circumstances through consultation with the taxpayer.

(2) The access shall be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the director with the hardware, software, and personnel resources to access the machine-sensible records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

(C) The taxpayer may convert the machine-sensible records to a standard record format specified by the director, including copies of files, on a magnetic medium that is approved by the director.

(D) Other means of providing access to the machine-sensible records may be agreed upon by the taxpayer and director.

(g) Taxpayer responsibility and discretionary authority.

(1) In conjunction with meeting the requirements of subsection (d), a taxpayer may create files solely for the use of the director, including a file that contains the transaction-level detail from the data base management system and that meets the requirements of subsection (d). The taxpayer shall document the process that created any separate file to show the relationship between that file and the original records.

(2) Any taxpayer may contract with a third party to provide custodial or management services of the records. A third-party contract shall not relieve the taxpayer of the taxpayer's responsibilities under this regulation.

(h) Alternative storage media.

(1) For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this regulation to microfilm, microfiche, or other storage-only imaging systems and may discard the original hard-copy documents, if the conditions of this subsection are met. Documents that may be stored on these media shall include the following:

(A) General books of account;

(B) journals;

(C) voucher registers;

(D) general and subsidiary ledgers; and

(E) supporting records of details, including sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Microfilm, microfiche, and other storage-

only imaging systems shall meet the following requirements:

(A) The taxpayer shall maintain, and make available on request, documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system. The documentation shall contain, at a minimum, a description sufficient to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) The taxpayer shall establish procedures for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subsection (j).

(C) Upon request by the director, the taxpayer shall provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

(D) When displayed on equipment or reproduced on paper, the documents shall exhibit a high degree of legibility and readability. For this purpose, "legibility" means the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. "Readability" means the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data stored on microfilm, microfiche, and other storage-only imaging systems shall be maintained and arranged in a manner that permits the location of any particular record.

(F) There shall be no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.

(i) Effect on hard-copy recordkeeping requirements.

(1) Except as otherwise provided in this regulation, the provisions of this regulation shall not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained using a recordkeeping medium as specified in subsection (h).

(2) If hard-copy records are not produced or received in the ordinary course of transacting business, including when electronic data interchange technology is used, hard-copy records

shall not be required to be produced simply for the purpose of maintaining hard-copy records.

(3) The taxpayer shall retain hard-copy records generated at the time of a transaction using a credit or debit card, unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. These details shall include those listed in paragraph (d)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes shall not be required to be retained.

(5) Nothing in this regulation shall prevent the director from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

(j) Record retention: time period. All records required to be retained under this regulation shall be preserved pursuant to K.S.A. 79-3609 and amendments thereto, unless the director has advised the taxpayer in writing that the records are no longer required. (Authorized by K.S.A. 2000 Supp. 79-3618 and K.S.A. 79-3707; implementing K.S.A. 2000 Supp. 79-3609, K.S.A. 79-3702, and K.S.A. 2000 Supp. 79-3706; effective July 27, 2001.)

92-19-5. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3607, 79-3615; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked Dec. 13, 2002.)

92-19-5a. Extension of time for filing a return. (a) Each request for an extension of time in which to file a return shall be submitted in writing and shall contain the taxpayer's business name and account number. The request shall be received by the department on or before the due date of the return. If granted, the extension shall extend the time for filing a return but shall not extend the time for payment of the tax that is due.

The taxpayer shall estimate the tax due for the filing period and remit that estimated tax with the extension request. If an extension request is received on or before the return's original due date, any tax that remains unpaid after the original due date shall accrue interest, but not penalty, from the original due date.

(b)(1) Each request for an extension of time to file a return that is received after the original filing due date shall be treated as a request for a waiver of penalty. Each late request for extension or a

request for penalty waiver shall be submitted in writing and shall contain the taxpayer's business name, account number, and the applicant's signature. The request shall state the reasons for the request and provide a definite date when the return will be filed and the tax due will be paid. An extension and waiver shall be granted upon proper showing of good cause as specified in subsection (c).

(2) If granted, the extension shall extend the time for filing a return but shall not extend the time for payment of the tax that is due. A taxpayer seeking an extension or penalty waiver after the normal due date shall estimate the tax due for the period or periods in question and remit the estimated amount. If an extension is granted, any tax that remains unpaid after the original due date shall accrue interest, but not penalty, from the original due date.

(c)(1) "Good cause" may include any of the following:

(A) The death or a disabling injury or illness of the taxpayer, a member of the taxpayer's immediate family, or a person upon whom the taxpayer has routinely relied for the preparation of returns;

(B) the prolonged, unavoidable absence of the taxpayer or a person upon whom the taxpayer routinely relied to prepare the returns and the taxpayer's preclusion from making alternative arrangements for the timely filing or payment, due to circumstances beyond the taxpayer's control;

(C) the destruction by fire or other means of the taxpayer's place of business or records;

(D) the embezzlement or fraud of an employee or agent; or

(E) the breakdown or malfunction of a computer that is essential to the preparation of the taxpayer's returns.

(2) Good cause shall be presumed to exist if the department's records indicate that, except for the delinquency in question, the taxpayer's sales tax account is current and paid in full and the taxpayer has not filed a delinquent return or made a delinquent payment during the 36 months that immediately precede the delinquency.

(d) A taxpayer may request a permanent extension of time to file returns. This extension shall be for not more than 60 days for each future filing period. As a condition for obtaining a permanent extension of time, the taxpayer shall file a cash or surety bond or shall open an escrow account in accordance with K.A.R. 92-19-35a(d). This security requirement shall continue in effect until the

permanent extension is terminated by the taxpayer or the director. A taxpayer who is granted a permanent extension of time to file returns shall remit the tax or the estimated tax that is due on or before the original due date. If a payment of tax is received on or before the original due date, any tax that remains unpaid after the original due date shall accrue interest, but not penalty, from the original due date. (Authorized by K.S.A. 2001 Supp. 79-3618, 79-3619; implementing K.S.A. 2001 Supp. 79-3602, 79-3603, as amended by L. 2002, ch. 185, sec. 6, K.S.A. 79-3607, K.S.A. 2001 Supp. 79-3615, 79-3619; effective Dec. 13, 2002.)

92-19-6. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3612, 79-3609; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked Aug. 23, 2002.)

92-19-6a. Retailer's duties when a retail business moves, ceases operation, or changes its name, ownership, or form of ownership.

(a) If a retailer ceases to do business or if a change of ownership occurs through the sale of a business or through a change in the legal form of business ownership, the retailer shall notify the department of the date of the last day of business operation or the date of the change of ownership. The retailer shall return its certificate for cancellation, remit all taxes, and file its final return during the month that follows the sale or the change of ownership of the business. The retailer shall preserve its business records for three years from the end of the calendar year or fiscal year, whichever is later, in which the retailer files its final return.

(b) When there is a sale or other change of ownership of a business, the entity acquiring ownership shall secure a certificate in its name before beginning business as the new owner.

(c) Each retailer shall promptly notify the department of any change in location, mailing address, business name, or trade name. Upon receipt of this notification, the retailer shall be issued an amended certificate by the department, or the old certificate shall be canceled and the retailer shall be issued a new certificate by the department.

(d)(1) For purposes of sales tax registration, a change in ownership of a business shall be deemed to occur when a business is sold or when a business changes its legal form of ownership from a sole proprietorship, partnership, corporation, or other legal form to another form of own-

ership. A change in ownership of a general partnership shall include the withdrawal, substitution, or addition of one or more general partners if the general partnership continues as a business organization and the change in the number of partners is equal to or greater than 50 percent.

(2) For purposes of sales tax registration, a change in ownership shall be deemed not to occur when there is a sale of all or part of the common stock in a corporation. A change in ownership of a limited partnership shall be deemed not to occur if the limited partnership continues as a business organization and either of the following occurs:

(A) A withdrawal, substitution, or addition of one or more limited partners in a partnership; or

(B) a withdrawal, substitution, or addition of one or more general partners if the number of general partners being changed is less than 50 percent.

(3) When control of a corporation is transferred to a different corporation or owner, or when new corporate officers are added or replaced, the corporation shall notify the department of the changes although no new sales tax certificate shall be required. When the change in the number of general partners is less than 50 percent, the partnership shall notify the department of the changes although no new sales tax certificate shall be required.

(4) Partners and officers who leave a business may, in their individual capacity, notify the department of the change to avoid possible claims of personal liability being made against them for reporting periods that occur after they have left the business. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 79-3608; effective Aug. 23, 2002.)

92-19-7. Leased departments. Where a person engaged in the business of selling tangible personal property or taxable services has leased certain parts of the premises wherein that business is conducted by other persons for use in selling tangible personal property or services, each such lessee shall make a separate return to the state: *Provided*, That the lessee keeps separate books of account and makes his own collections on account of the sales. If the lessor keeps the books for the lessee, the lessor must render a consolidated return, including therein the gross receipts from the operations of the business conducted by the lessee. (Authorized by K.S.A. 79-3608, 79-3618, K.S.A. 1971 Supp. 79-3602, 79-

3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

92-19-8. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, 79-3608, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked June 26, 1998.)

92-19-9. (Authorized by K.S.A. 79-3608, 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1988.)

92-19-10. Repossessed property. When the original retailer repossesses tangible personal property and resells it to a final user or consumer, the gross receipts from the sale are taxable. When tangible personal property is repossessed and resold by a bank, savings and loan institution, credit union or finance company licensed pursuant to the Kansas uniform consumer credit code, the sale qualifies as an isolated or occasional sale pursuant to K.S.A. 1986 Supp. 79-3602(j) and amendments.

When a retailer sells tangible personal property on credit and later repossesses the tangible personal property sold, the retailer shall use one of the following methods for recording the transaction:

(1) If the retailer's records are kept on the accrual basis so that the total selling price of the repossessed property was previously reported, the retailer may report the unpaid balance as a deduction from the gross receipts on the retailer's next tax return.

(2) If the retailer included in the gross receipts only the amount of cash actually received from the sale of the repossessed property, the retailer shall not receive credit for the return of the repossessed property to the retailer's stock. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, K.S.A. 1986 Supp. 79-3607; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988.)

92-19-11. Property purchased for resale, but used by purchaser. If a wholesaler or retailer takes tangible personal property from a stock of goods to use for personal consumption or

for gifts, he shall enter on his books the amount of the cost of all tangible personal property so removed from stock for his personal consumption or as gifts, and, as the ultimate consumer, shall pay the tax thereon. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

92-19-12. Newspapers, magazines, periodicals, trade journals, publications and other printed matter. (a) Newspapers, magazines, periodicals, trade journals, publications and other printed matter are tangible personal property and the receipts from retail sale of these items are taxable.

(b) When subscriptions for newspapers, magazines, periodicals, trade journals, publications and other printed matter are taken within the state of Kansas, sent to a printer or publishing house outside Kansas and the publication is thereafter mailed to the subscriber within Kansas, the receipts from the subscriptions are taxable.

(c) When newspapers, trade publications, advertising pamphlets, circulars and other publications, are distributed free of charge, the person printing or publishing the publication for sale to the distributor is deemed to be the seller thereof and must collect the tax.

(d) Each person who prints or produces and distributes publications, free of charge, is regarded as the final user or consumer of all materials used to print or produce the publication. For tax purposes, the printer or publisher shall pay sales tax on all purchases of materials used to print or produce the publication.

If a person prints or publishes tangible personal property for sale to consumers, and also prints or publishes publications which are distributed free of charge, a person may purchase all materials used in the printing and publishing process exempt from sales tax. When a person prints or publishes the publication for distribution free of charge, that person shall include the cost of all exempt materials purchased for use in printing or producing that publication on the sales tax return and impose sales tax on that amount. (Authorized by K.S.A. 79-3618, K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, 79-3606, as amended by L. 1987, Ch. 64, Sec. 1; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988.)

92-19-13. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1985 Supp. 79-3602, 79-3603 as amended by L. 1986, Ch. 386, Sec. 1, K.S.A. 1985 Supp. 79-3606 as amended by L. 1986, Ch. 384, Sec. 1; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; revoked June 26, 1998.)

92-19-13a. Florists. (a) For purposes of this regulation, "florist" means someone who is engaged in the business of selling flowers, potted plants, nursery stock, bouquets, wreaths, and other similar items at retail. Each florist shall collect sales tax on its sales of tangible personal property and on its charges for creating and fabricating flower and ornamental plant arrangements. A florist's delivery charges, whether or not separately stated, shall be included in the selling price that is subject to sales tax.

(b) In accordance with K.S.A. 79-3619, and amendments thereto, each retailer shall comply with the following special rules when sales are made through a floral telegraphic delivery association or a similar florist association or organization.

(1) Sales tax shall be collected on orders taken by a Kansas florist to be telegraphed to a second florist, whether the delivery is to be made within or without the state. Any handling charges in connection with these sales shall be included in the selling price that is subject to sales tax.

(2) A Kansas florist making deliveries pursuant to a telegraph order received from another florist shall not collect the tax, whether the florist forwarding the order is located within or without the state of Kansas.

For purposes of this subsection, "telegraph" means telegraph, telephone, or any other electronic means of long distance communication used by a florist organization. (Authorized by K.S.A. 79-3618, 79-3619; implementing K.S.A. 79-3603, K.S.A. 79-3619; effective June 26, 1998.)

92-19-14. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603, 79-3606; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; revoked, E-71-21, July 1, 1971; revoked Jan. 1, 1972.)

92-19-15. Undertakers and funeral directors. Each funeral director who charges a lump sum for a funeral service that covers the total funeral charge, including services and tangible

personal property, is required to collect, report, and remit sales tax on 50% of the entire amount charged for each funeral including embalming, casket, and usual services. When a funeral director charges separately for the sale of tangible personal property and for required services, the sales tax shall be collected only on an amount equal to the retail sales price of the tangible personal property if charges for tangible personal property are segregated from those for services rendered on the invoice furnished to the purchaser.

Cash advanced by the funeral director for the purchase of a cemetery lot or grave, associated cemetery expenses, remuneration to the minister and choir, use of the church, and press notices shall not be subject to sales tax.

Each funeral director shall collect and remit four percent on the full retail price of the sale of vaults, clothing, flowers and other special merchandise. Sales of hearses, furniture, instruments, and other equipment to a funeral director are taxable.

Each funeral director shall not collect and remit sales tax on a charge for embalming services when the services are not a part of a regular funeral service. Sales to a funeral director of embalming fluid and other material used in an embalming service are taxable.

When articles of personal property are ordered by the family from a merchant to be delivered to the funeral home, the merchant actually making the sale shall collect and remit the sales tax.

When bodies are shipped or delivered from one funeral director to another within the state of Kansas, the funeral director furnishing the merchandise shall collect and remit the sales tax.

When burial vaults or other items of personal property are sold in Kansas for ship-in cases, tax shall be charged and collected on the actual selling price of the merchandise.

Sales tax shall not be charged when the state of Kansas or another political subdivision pays for a burial. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1985 Supp. 79-3602, 79-3603 as amended by L. 1986, Ch. 386, Sec. 1; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

92-19-16. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective, E-70-33, July 1, 1970; effective, E-71-8,

Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; amended May 1, 1988; revoked June 26, 1998.)

92-19-16a. Gifts, premiums, prizes, coupons, and rebates. (a) Each sale of tangible personal property shall be taxable if made to a person who will use the property as a prize or premium or who will give the property away as a gift. Donors of articles of tangible personal property shall be regarded as the users or consumers of the property. If a retailer donates property that was originally acquired for resale, the retailer shall accrue tax on the cost it paid for the property when the retailer files its next sales tax return, unless the retailer donates the property to an entity that is exempt from taxation on its purchases under K.S.A. 79-3606, and amendments thereto, or has provided the retailer with a resale exemption certificate.

(b) If a retailer making a retail sale that is subject to tax gives a premium or prize along with the item being sold, the transaction shall be regarded as the sale of both items to the purchaser if delivery of the premium or prize does not depend on chance.

(c) If the award of a premium or prize by a retailer depends on chance, the retailer's acquisition of the premium or prize shall be subject to sales tax. The retailer shall pay the tax at the time of acquisition of the premium or prize or, if the item is removed from resale inventory, shall accrue tax on the item's cost on its sales tax return.

(d) If a retailer accepts a coupon for a taxable product and will later be reimbursed by a manufacturer or other party for the reduction in selling price, the total sales value, including the coupon amount, shall be subject to sales tax. If a retailer accepts a coupon and will not be reimbursed for the reduction in selling price, the reduction shall be considered a discount, and the taxable amount shall be the net amount paid by the customer after deducting the value of the coupon. If a retailer enhances the value of a manufacturer's coupon, the amount of the unreimbursed enhancement shall be treated as a discount that is not subject to sales tax.

(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.

(f) Sales of gift certificates, meal cards, or other forms of credit that can be redeemed by the holder for the equivalent cash value shall not be subject to tax when sold. If the certificate or other form of credit is used as a cash equivalent to purchase taxable goods or services, the retailer who redeems the certificate or other form of credit shall charge sales tax on the selling price of the goods or services.

(g) Sales of coupon books and similar materials that entitle the holder to a discount or other price advantage on the purchase of goods or services shall be presumed to have value in addition to the coupons or discounts contained in them and shall be taxable as sales of tangible personal property, except when the sale of this type of book is by a nonprofit organization that treats the receipts from the sales as a donation. If a coupon is redeemed from a coupon book or other material sold at retail, the retailer who redeems the coupon shall charge sales tax in accordance with the requirements for sales made with coupons that are specified in subsection (d).

(h) If a nonprofit organization treats receipts from the providing of coupon books and similar materials as donations, the nonprofit organization shall be liable for paying sales tax when it purchases the coupon books or other materials that are provided to a donor when a donation is made, unless the organization is otherwise exempted from paying tax on its purchases. If a coupon is redeemed, the retailer who redeems the coupon shall charge sales tax in accordance with the requirements for sales made with coupons that are specified in subsection (d). (Authorized by K.S.A. 2006 Supp. 75-5155 and K.S.A. 2006 Supp. 79-3618; implementing K.S.A. 2006 Supp. 79-3602 and K.S.A. 2006 Supp. 79-3603; effective July 27, 2001; amended April 13, 2007.)

92-19-16b. Manufacturers' rebates for motor vehicles. (a) For purposes of this regulation, a "manufacturer's rebate" shall mean a manufacturer's return of part of the amount paid for a new motor vehicle after the time of sale.

(b) Pursuant to the definition of "sales or selling price" in K.S.A. 79-3602 and amendments

thereto, the right to receive payment of a manufacturer's rebate on a new motor vehicle that a customer assigns to the motor vehicle dealer at the time of sale or lease shall reduce the selling price of the vehicle by the rebate amount if the dealer issues a customer invoice that clearly shows that the rebate amount has been applied to reduce the selling price of the vehicle.

(c) In order for the tax base to be reduced, the customer shall assign its right to the manufacturer's rebate to the dealer at the time of sale or lease. If a customer accepts a manufacturer's rebate as a cash payment or if the dealer applies the rebate as a cash payment from the customer, the rebate amount shall not reduce the selling price of the vehicle.

(d) Only manufacturers' rebates extended on purchases or leases of new motor vehicles shall qualify for exclusion from the selling price of a retailer's merchandise. Manufacturers' rebates extended on purchases or leases of boats, trailers, off-highway equipment, and other merchandise shall be treated as a form of payment to the retailer as specified in K.A.R. 92-19-16a and shall not reduce the selling price of the merchandise even if the right to receive payment of the rebate is assigned to the retailer. (Authorized by K.S.A. 2005 Supp. 75-5155 and K.S.A. 2005 Supp. 79-3618; implementing K.S.A. 2005 Supp. 79-3602, as amended by L. 2006, Ch. 202, Sec. 1, K.S.A. 2005 Supp. 79-3607, and K.S.A. 2005 Supp. 79-3609; effective April 13, 2007.)

92-19-17. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; revoked, E-71-21, July 1, 1971; revoked Jan. 1, 1972.)

92-19-18. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; amended May 1, 1988; revoked June 26, 1998.)

92-19-18a. Signs and billboards. (a) Signs.

(1) The custom fabrication, sale, and installation of a sign shall be a retail sale. The sale shall be subject to sales tax on the full selling price charged to the consumer.

(2) The custom painting, lettering, mainte-

nance, and repair of signs shall be retail sales of taxable services. These sales shall be subject to sales tax on the full selling price charged to the consumer, whether the sign is on a door, window, building, motor vehicle, trailer, or other real or personal property.

(3) Materials that are used to fabricate, paint, maintain, or repair signs of others shall be exempt from sales tax when purchased by a sign dealer or custom painter since sales tax is required to be collected by the dealer or painter on the full selling price charged to the consumer. Sales to sign dealers and sign painters of tools, equipment, and machinery shall be subject to sales tax at the time of sale.

(b) Billboards.

(1) Sales tax shall not apply to charges for the rental or lease of billboard space, for advertising messages on electronic billboards, or for other advertising exposure time on other types of signs and billboards.

(2) When a billboard advertising company fabricates and erects a billboard, the billboard company's subsequent rental or lease of space on the billboard shall be considered to be a nontaxable advertising service. A billboard advertising company that erects its own billboards and leases billboard space shall be responsible for paying or accruing tax on the materials used to fabricate, erect, and alter the billboard.

(3) When a sign company fabricates and erects a billboard for a third party billboard advertising company that is buying the billboard, the sign company shall collect sales tax on the full selling price. Any subsequent rental or lease of space on the billboard by the billboard advertising company shall be considered to be a nontaxable service.

(c) Portable sign rentals. Sales tax shall apply to rental or lease charges for the use of portable advertising signs. Sales tax shall be collected on the lease and rental charges in the same manner as for other leases and rentals of tangible personal property. (Authorized by K.S.A. 79-3618 and 79-3619; implementing K.S.A. 79-3602, 79-3603, and K.S.A. 79-3619; effective June 26, 1998.)

92-19-19. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, 79-3608, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 64, Sec. 1; as further amended by L. 1987, Ch. 292, Sec. 32; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective

Jan. 1, 1972; amended May 1, 1987; amended May 1, 1988; revoked June 26, 1998.)

92-19-20. Gas, water, certain fuel and electricity. (a) An exemption for gas, fuel or electricity shall not be allowed when utilized for the purpose of heating, cooling, and lighting buildings or business premises except electricity, gas, fuel and water actually used by hotels and motels in rented rooms taxable under K.S.A. 79-3603.

(b) An exemption for gas, water, fuel, and electricity shall not be allowed when utilized for the purpose of maintaining buildings, business premises, offices, plants, or warehouses except gas, fuel and electricity used for the operation of equipment in the actual process of providing services taxable under K.S.A. 79-3603(e) and (m). The following list is not exclusive but is an indication of the types of equipment and devices exempted when power is used in their operation:

- (1) Automatic pinsetters, ball returns, telescope screens and scorer's tables in bowling alleys;
- (2) ferris wheels, merry-go-rounds and other carnival rides;
- (3) baseball pitching machines if rental fees are charged;
- (4) pinball machines;
- (5) movie projecting equipment and movie screens in theaters, and other similar devices.

(c) When claiming an exemption, the following procedures and conditions shall apply:

(1) When gas, electricity, or water is furnished through one meter for both taxable and exempt purposes, the taxpayer shall have the burden of establishing the exempt portion or percentage of the gas, water or electricity.

(2) The purchaser shall furnish the supplier a statement to enable the supplier to determine the percentage of the gas, water and electricity subject to exemption under K.S.A. 79-3606(f) and (n). The formula and computations used in determining the exemption shall be available for inspection any time by the department of revenue.

(3) The purchaser shall file a revised exemption statement with the supplier when the percentage used in processing tangible personal property changes.

(d) Tax is due on each payment for taxable gas, water, and electricity whether in the form of a minimum charge, a flat rate, or otherwise, and regardless if there is actual consumption.

(e) When an owner or operator of an office building or apartment house purchases gas, water,

or electricity through a single meter, and remeters the gas, water, and electricity to their tenants through private meters, the owner or operator is deemed the final user or consumer of the gas, water, and electricity and shall pay the tax on all bills rendered on these utilities. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1985 Supp. 79-3602, 79-3603 as amended by L. 1985, Ch. 386, Sec. 1, 79-3606 as amended by L. 1985, Ch. 384, Sec. 1, 79-3608; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; amended, E-71-21, July 1, 1971; amended Jan. 1, 1972; amended May 1, 1987.)

92-19-21. Meals or drinks. (a) Each boardinghouse shall pay the tax on their purchases of food and other supplies. When a boardinghouse serves meals only to persons regularly boarding there and not to the public, sales of these meals are not taxable. However, if a boardinghouse holds itself out as ready and willing to serve meals to the public, the sale of each meal shall be taxable.

(b) When meals are furnished by employers to employees and a charge is made, the employer must remit the tax on the price of the sales. When meals are finished by employers to employees at no charge, the furnishing of meals does not constitute a sale and is not taxable.

(c) When a private or public elementary or secondary school, or a public or private nonprofit educational institution operates its lunch room, cafeteria, or dining room for the purpose of providing meals for its respective students or teachers, the school or institution shall not be considered to be engaged in the business of regularly selling meals or drinks to the public and shall not collect or remit tax on these sales.

When a public or private elementary or secondary school or a public or private nonprofit educational institution makes its cafeteria, lunch room, or dining room available for use by the general public, the school or institution shall be considered to be in the business of conducting a place in which meals or drinks are regularly sold to the public, and shall collect and remit the sales tax. A caterer or concessionaire operating a cafeteria, lunch or dining room on the premises of any public or private elementary or secondary school or public or private nonprofit educational institution shall collect and remit sales tax.

(d) When a public or private nonprofit hospital operates a lunch room, cafeteria, or dining room

for the exclusive purpose of providing meals for its respective employees and staff the hospital shall not be considered to be engaged in conducting a place where meals or drinks are regularly sold to the public and shall not collect and remit tax on these sales.

When a public or private nonprofit hospital makes its cafeteria, lunch room, or dining room available for use by the general public, the hospital shall be considered to be in the business of conducting a place where meals or drinks are regularly sold to the public and shall collect and remit the sales tax. Caterers or concessionaires operating cafeterias, lunch, or dining rooms on the premises of any public or private nonprofit hospital shall collect and remit sales tax.

(e) The sale of a meal or other tangible personal property, consumed or not, while on a railway train or a dining car operated in or through Kansas, is deemed a sale at retail. Gross receipts from the sale of meals or other tangible personal property are taxable if the meals or tangible personal property are ordered within the boundaries of Kansas. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1985 Supp. 79-3602, 79-3603 as amended by L. 1986, Ch. 386, Sec. 1; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1975; amended May 1, 1987.)

92-19-22. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked Dec. 13, 2002.)

92-19-22a. Admissions. (a) Definitions. For purposes of taxing the receipts received from the sale of admissions, the following definitions shall apply:

(1) "Admission" shall mean a right or privilege that allows a person access to, seating in, or use of a place of entertainment, amusement, or recreation. The person who gains admission may have a right to observe something or to participate in an activity.

(2) "Receipts from sales of admissions" shall mean the consideration received from charges paid for admission, including any charges for seating accommodation. This term shall include ticket charges, season ticket charges, gate charges, surcharges, cover charges, sky box charges, reserved seat charges, seating preference charges, and all other similar charges.

(3) "Place" shall mean any area with an exterior

boundary that is defined by walls or fences, or in any other manner that allows the area to be readily recognized and distinguished from the adjoining or surrounding property. This term shall include buildings, fenced enclosures, and areas delimited by posted signs or flags.

(4) "Place of amusement, entertainment, or recreation" shall mean any place where a show, sporting event, or exhibition takes place. This term shall include auditoriums; racetracks; street fairs; festival sites; historic sites; sites of athletic events or musical performances; dance halls; skating rinks; rodeo grounds; exhibition sites, including antique and flea markets, gun shows, boat shows, home shows, and similar exhibition events for retailers, manufacturers, or others; theaters; planetariums; zoos; bars; restaurants; museums; art galleries; lecture sites; fairgrounds; carnival sites; fishing lakes; skeet ranges; and all other similar venues.

(5) "Recreation" shall mean any diversion that restores or refreshes strength and spirit. This term shall include both active and passive pursuits, including watching baseball and visiting an art gallery or museum.

(b) Admission charges that shall be subject to sales tax shall include charges for the following:

(1) Admission to places of amusement, entertainment, or recreation;

(2) admission to athletic events, lectures, plays, concerts, and other forms of entertainment sponsored by public or private elementary or secondary schools or by public or private educational institutions in Kansas;

(3) admission to any state, county, district, or local fair in Kansas;

(4) admission to private parks, campgrounds, and other recreation areas;

(5) admission gained by tickets that are bartered or given by a promoter or another party for services or something else of value; and

(6) sightseeing rides or tours on buses, aircraft, boats, trains, or other forms of transportation. If a ride or tour is advertised or otherwise held out as being primarily for sightseeing or entertainment, the charge shall be considered to be for a recreational activity rather than for a transportation service.

(c) Admissions and charges that shall not be subject to sales tax shall include the following:

(1) Free admissions;

(2) charges for instructional seminars required

to meet professional continuing education requirements;

(3) charges paid to nonprofit groups for admission to an event operated within the isolated or occasional sale limitations;

(4) charges for admission to any cultural and historical event that occurs once every three years;

(5) charges paid to nonprofit homeowners associations by members for use and maintenance of the association's recreational facilities, if membership is limited to a specified development, subdivision, or area and the facility is operated for the benefit of the property owners or their tenants;

(6) charges for instruction lessons conducted at a facility, if the charges are exclusively for the instruction lessons and include the use of the facility only during the period of time that the lessons take place;

(7) charges for admission to federal, state, city, or county parks, campgrounds, and recreation areas; and

(8) charges for church camps and religious retreats that are being operated exclusively for religious purposes and are exempt under K.S.A. 79-3606, and amendments thereto.

(d) If admission charges to a place in Kansas are taxable, Kansas sales tax shall be collected and remitted regardless of whether the admission ticket is sold within or without the state of Kansas.

(e) If a person or organization acquires the sole right to use a facility or the right to all of the admissions to any place for one or more occasions, the amount paid for the right shall not be subject to sales tax as an admission. The transaction shall be treated as a rental of real property. However, any admission charge made by the person or organization that acquired the right to use the facility shall be taxable.

(f) Each retailer shall report the sale of an admission ticket during the reporting period in which the ticket is sold. No sales tax refund or credit shall be allowed for nonuse of a ticket or other admission charge, unless the selling price of the ticket is also refunded.

(g)(1) An exemption for gas, fuel, or electricity shall not be allowed if the gas, fuel, or electricity is utilized for heating, cooling, or lighting a building or other area where admission is gained.

(2) An exemption shall not be allowed for water, cleaning supplies, toilet supplies, sanitary supplies, and other consumables and supplies used to furnish and maintain a building or other area where admission is gained so that the building or

other area is fit for public occupancy as a place of entertainment. These exemptions shall not be allowed regardless of whether the business that owns the building or other area where admission is gained meets either of the following conditions:

(A) Rents or leases the building or premises as real property for use by the lessee; or

(B) charges taxable admission to consumers to enter and use the building or other property. (Authorized by K.S.A. 2005 Supp. 75-5155 and K.S.A. 2005 Supp. 79-3618; implementing K.S.A. 2005 Supp. 79-3602, K.S.A. 2005 Supp. 79-3603, and K.S.A. 2005 Supp. 79-3606; effective Dec. 13, 2002; amended March 24, 2006.)

92-19-22b. Charges for participation in recreational activities. (a) Definitions. For purposes of taxing the fees and charges received for participation in sports, games, and other recreational activities, the following definitions shall apply:

(1) "Sports, games, and other recreational activities" shall mean diversions that restore or refresh strength and spirits by means of pastime, exercise, or similar activities that involve strength, speed, dexterity, stamina, or training. These activities shall include golf, pool, billiards, skating, bowling, swimming, skiing, baseball, softball, basketball, volleyball, racquetball, handball, squash, tennis, carnival rides, motor sports, batting practice, skeet, trap, target shooting, horse riding, pinball, darts, electronic games, physical fitness services, and all other similar activities.

(2) "Physical fitness services" shall include exercise classes, whether aerobic, dance, water, jazzercise, or other type; the provision of equipment for weight lifting and training; the provision of exercise equipment, including treadmills, bicycles, stairstep machines, and rowing machines; the provision of running tracks; and the provision of all other similar equipment or facilities. "Physical fitness services" shall not include instructional lessons including those for self-defense, martial arts, yoga, stress management, tennis, golf, and swimming. "Instructional lessons" can be distinguished from "exercise classes" in that instruction about the activity is the primary focus in the former and exercise is the primary focus in the latter.

(3) "Entry fees" shall mean payments that allow a person or team the right to or privilege of entering and participating in a tournament or other type of competition.

(4) "League fees" shall mean payments that al-

low a person or a person's team to join an association of sports teams or clubs that compete chiefly among themselves and to participate in the underlying sport or other recreational activity.

(b) Charges for participation in sports, games, and other recreational activities shall be considered to be charges for the right or privilege to participate in them. Taxable receipts for participation in sports, games, and other recreational activities shall include all fees or charges, including entry fees and league fees.

(c) The following receipts for participation in sports, games, and other recreational activities shall not be subject to sales tax:

(1) Fees and charges by any political subdivision, green fees charged by municipal golf courses, entry fees, league fees, and other participant fees charged by park and recreation departments;

(2) fees and charges by Boy Scouts, Girl Scouts, YMCA, YWCA, and any other organization that is exempt from property taxation pursuant to paragraph *Ninth* of K.S.A. 79-201, and amendments thereto;

(3) fees and charges for participation in sports, games, and other recreational activities by any youth recreation organization that provides services exclusively to persons 18 years of age or younger and that is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(4) fees and charges for participation in automobile races sponsored by a national racing association and any other similar entry fees and charges to special events or tournaments sanctioned by a national sporting association to which spectators are charged an admission that is taxable pursuant to K.A.R. 92-19-22a; and

(5) charges for instructional lessons in sports, arts, and crafts.

(d)(1) An exemption for gas, fuel, or electricity shall not be allowed if the gas, fuel, or electricity is utilized for heating, cooling, or lighting a building or business premises where sports, games, or recreational activities are conducted. An exemption shall not be allowed for water, cleaning supplies, toilet supplies, sanitary supplies, and other consumables and supplies used to furnish and maintain a building or business premises so that the business premises or building is fit for public occupancy as a place where sports, games, or recreational activities are conducted.

(2) An exemption shall be allowed for electricity

or fuel that powers a machine that provides amusement or recreation and that directly interacts with the person who pays for the time-limited, interactive service that is being provided by the machine. This exemption shall include the following:

(A) Automatic pinsetters, ball returns, telescope screens, and scorers' tables in bowling alleys;

(B) Ferris wheels, merry-go-rounds, and other carnival rides;

(C) baseball pitching machines, if rental fees are charged;

(D) pinball machines; and

(E) movie projection devices in movie theatres.

The exemption for electricity consumed by machines that provide time-limited, interactive services shall be determined in accordance with K.A.R. 92-19-20. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 2001 Supp. 79-3602, K.S.A. 2001 Supp. 79-3603, as amended by L. 2002, ch. 185, sec. 6, and K.S.A. 2001 Supp. 79-3606; effective Dec. 13, 2002.)

92-19-23. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked Dec. 13, 2002.)

92-19-23a. Coin-operated devices, including vending machines. (a) Except for laundry services, retailers shall collect state and local sales tax on the taxable sales of property, amusement, and services made through coin-operated devices.

(b)(1) For purposes of this regulation, "coin-operated device" shall be deemed to include vending machines and other devices that operate when activated by coins, paper money, credit cards, tokens, or similar payment or representation of monetary payment.

(2) Coin-operated devices shall include machines that dispense food, candy, drinks, or items of tangible personal property, including photocopies; that provide amusement and diversion; or that provide taxable services. Coin-operated devices that provide amusement and diversion shall include jukeboxes, pinball machines, pool tables, foosball tables, dart games, video games, and similar devices.

(3) State and local sales taxes shall be collected on coin-operated devices used for playing games of chance, except for devices that are being law-

fully operated for gambling under the Kansas lottery act, Kansas parimutuel racing act, or federal Indian gaming laws. Sales tax shall be collected on the gross receipts from these devices, and no deductions shall be allowed for any money, credits, or property awarded as prizes.

(c) Each business's receipts taken from a coin-operated machine shall represent a tax-included amount. To calculate the gross receipts from a tax-included amount, the total amount of receipts taken from the device shall be divided by one plus the sum of the state and local sales tax rates, stated as a decimal. The result of this calculation shall be the gross receipts that are reported on tax returns as the gross receipts from the coin-operated device that are subject to state and local sales tax. A business that operates coin-operated devices shall not deduct commissions or any other payment made to businesses upon whose premises the devices are located.

(d) Any business that operates vending machines or other coin-operated devices at different locations may secure a single registration certificate and file a single consolidated return for all of these devices. Local sales tax shall be due based on the location of each device. Each business that requests to file a consolidated return in this manner shall submit a list with its written request that shows the location of each device, its serial number, and the type of property or service being sold or provided by the device. The business shall maintain a current list of device locations at its place of business, which shall be available to the department for inspection during normal business hours.

(e) Registered retailers, including taverns and bars, that operate coin-operated devices on their premises and account for the total receipts from the devices may report these receipts on their regular returns as tax-included receipts rather than securing a separate registration certificate.

(f) Receipts from car and truck washes shall be subject to tax, regardless of whether the washing and waxing services are performed by employees or by manual or automatic machines and whether the machines are coin-operated.

(g) Receipts from coin-operated laundry machines, including clothes washers and dryers, shall be exempt from sales tax. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 2001 Supp. 79-3603, as amended by L. 2002, ch. 185, sec. 6; effective Dec. 13, 2002.)

92-19-24. Renting of rooms by hotels; taxable property and services.

(a) Sales tax shall be imposed on the total gross receipts received from the rental of rooms by hotels as defined in K.S.A. 36-501 and amendments thereto. Accommodations generally referred to as "sleeping rooms" shall be subject to sales tax. Each rental of a hotel sleeping room shall be subject to sales tax regardless of the length of time for which the room is rented. The transient guest tax exemption for hotel rooms rented for more than 28 consecutive days shall not apply to the sales tax imposition. Sales tax shall not apply to rentals of ballrooms, banquet rooms, reception rooms, meeting rooms, and office space.

(b) Each hotel shall be deemed to be the consumer of all items that are not for resale and that are used to conduct the hotel's business. Each hotel shall pay sales tax on each purchase of tangible personal property and taxable services, unless specifically exempted by statute. Hotel purchases of beds, linens, towels, furniture, equipment, appliances, glass cups and ashtrays, and cable television services shall be subject to sales tax. Items that are used in the hotel room by the guest and that are disposable in nature, including toilet tissue, facial tissue, and soap and shampoo for the guest's personal use, shall be considered a component of the service of hotel room rental, and shall be exempt from sales tax.

(c) Services of installing, applying, repairing, servicing, maintaining, or altering the hotel's physical plant, including the equipment, shall be taxable.

(d) Each hotel may purchase, exempt from sales tax, premium cable television service channels that are separately billed to the guest. Each hotel shall collect sales tax for the cable television services billed by the hotel to the guest.

(e) Electricity, gas, fuel, and water actually used by a hotel in sleeping rooms shall be exempt from sales tax. The exemption shall not apply to electricity, gas, fuel, and water consumed in a hotel's common areas, parking lots, offices, swimming pools, ballrooms, banquet rooms, reception rooms, meeting rooms, and other areas that are either not rented by the hotel or whose rental charges are not taxed under the act. If electricity, gas, fuel, or water is furnished through one meter, the hotel shall furnish the utility with a statement showing the electricity, gas, fuel, or water actually used in the rented sleeping rooms of the hotel so the utility can determine the percentage of elec-

tricity, gas, fuel, or water that is taxable. Each hotel shall make available to the department of revenue the formula and computations used to determine the exemption.

(f) Receipts from providing laundry services, dry cleaning, and valet services shall be taxable. If a hotel sends a guest's clothing out to a third-party cleaner, the hotel may purchase the cleaning exempt from sales tax for resale purposes, and shall include the charge and sales tax on the guest's bill.

(g) Each hotel purchasing water, soap, solvents, and other cleaning materials for the hotel's own use in cleaning or maintaining guest rooms, swimming pools, and other areas of the hotel shall be subject to sales tax. (Authorized by K.S.A. 2000 Supp. 79-3618; implementing K.S.A. 2000 Supp. 79-3602, K.S.A. 2000 Supp. 79-3603 as amended by SB 1, Sec. 1 and as further amended by SB 322, Sec. 2, K.S.A. 2000 Supp. 79-3606 as amended by HB 2029, Sec. 1 and as further amended by SB 332, Sec. 3; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; amended May 1, 1988; amended July 27, 2001.)

92-19-25. (Authorized by K.S.A. 79-3609, 79-3610, 79-3611, 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1987.)

92-19-25a. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3609, 79-3610, 79-3611, K.S.A. 1985 Supp. 79-3602, 79-3603 as amended by L. 1986, Ch. 386, Sec. 1; effective May 1, 1987; revoked June 26, 1998.)

92-19-25b. Exemption certificates. (a) All retail sales shall be presumed to be taxable. The burden of proving that a sale is exempt from tax shall be on the vendor, unless the vendor takes an exemption certificate from the purchaser in good faith.

(b) A vendor shall be deemed to have accepted an exemption certificate in good faith when the vendor maintains the completed certificate as part of its records, has ascertained the identity of the person or entity who presents the certificate, and has not been shown by the department by a preponderance of evidence to have had knowledge that the presentation of the certificate was improper.

(c) Exemption certificates shall substantially comply with the following format:

KANSAS EXEMPTION CERTIFICATE

I certify that the sale of tangible personal property or service by:

(Vendor's name)

of _____, Kansas, to me or to the entity that I represent is exempt from the tax levied by the Kansas retailers' sales and compensating tax act for the following reasons:

As purchaser, I understand and agree that if the property or service is used in any manner that is not exempt from tax under the act, the entity that I represent becomes liable for the tax, as do I personally.

Date: _____

Purchaser: _____
(Signature and SSN or FEIN)

Name of the entity: _____

Address: _____

(d) Each exemption certificate issued by a non-profit entity claiming an exemption shall contain the name and address of the entity; identify the subsection of K.S.A. 79-3606, and amendments thereto, under which the exemption is claimed; be signed by an officer, office manager, or other administrator of the entity; and contain the drivers license number of the signer. As a condition of honoring these exemption claims, a vendor may require that payment be made on the entity's check, warrant, or voucher, or be charged to the entity's account.

(e) A resale exemption certificate may be issued by a registered retailer to claim exemption from tax for purchases of property or services that the retailer intends to resell on the normal course of business or that the retailer is unable to determine will be resold or used by the retailer for some other purpose. Resale exemption certificates shall substantially comply with the following format:

KANSAS RESALE EXEMPTION CERTIFICATE

(Name of purchaser)

(Address of purchaser)

I hereby certify that: I hold valid retailer registration No. _____ issued pursuant to the Kansas sales and compensating tax law; I am engaged in the business of selling:

The tangible personal property described herein which I shall purchase from:

(Vendor's name)

_____ will be resold by me in the form of tangible personal property;

I further agree that, if any of the property is used for any purpose other than retention, demonstration, or display while holding it for resale in the regular course of business, I will report and pay Kansas state and local sales tax to the Kansas Department of Revenue, based on the amount that I paid for the property. Description of property to be purchased:

Date: _____

(Signature of purchaser or authorized agent and SSN or FEIN)

(f) Each purchaser claiming a resale exemption shall complete the certificate either by listing the particular property claimed to be for resale or by describing the types of property that are resold in the normal course of the purchaser's business. When a purchaser buys property for resale that is not of the type normally resold in the purchaser's line of business, the vendor may require the purchaser to issue a separate resale exemption certificate that lists the property and states that it is being purchased for resale. A vendor may require a purchaser to provide a copy of its registration certificate as a condition for honoring a resale exemption certificate.

(g) Vendors shall keep a record of each exempt sale of property or services made, showing the date, amount, consumer's name and address, item or service sold, and other pertinent information needed to support each deduction taken on a return. Each vendor shall make such records and exemption certificates available to the department for inspection. Each exemption certificate shall be retained by the vendor for at least three years after the end of the year in which the certificate was last honored or until the final determination of any audit or assessment that includes a period during

which the certificate was honored. (Authorized by K.S.A. 79-3606, 79-3618; implementing K.S.A. 79-3602, 79-3603, 79-3609, 79-3610, 79-3611; effective June 26, 1998.)

92-19-26. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3606; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1987.)

92-19-27. (Authorized by K.S.A. 79-3608, K.S.A. 1973 Supp. 79-3602, 79-3618; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1987.)

92-19-27a. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3608, K.S.A. 1985 Supp. 79-3602; effective May 1, 1987; revoked June 26, 1998.)

92-19-28. Motor carriers. Sales of tangible personal property or services to any motor carrier engaged in the transportation of persons or property in interstate common-carrier transportation are subject to the Kansas retailers' sales tax in the same manner as are sales to other firms, persons or corporations except as follows:

a) Sales of rolling stock, including busses and trailers to each motor carrier qualifying as a public utility and engaged in either interstate commerce exclusively or interstate commerce and intrastate commerce, and the rolling stock are immediately and directly used in interstate commerce are exempt. The rolling stock may be temporarily stored within the state until it is directly and immediately consumed in interstate commerce. However, charges for labor services rendered to common carriers authorized to engage in interstate commerce by the interstate commerce commission for the servicing, maintenance, or repair of rolling stock including busses and trailers are taxable.

b) Sales of all repair parts and replacement materials or parts to each motor carrier qualifying as a public utility, engaged in either interstate commerce exclusively or interstate commerce and intrastate commerce, when the repair parts and replacement material or parts are immediately and directly used in interstate commerce are exempt. The repair parts and replacement materials or parts may be temporarily stored within the state until they are directly or immediately consumed exclusively in interstate commerce.

c) Sales of gasoline, distillate and other motor fuels to each motor carrier qualifying as a public

utility, engaged in either interstate commerce exclusively or interstate commerce and intrastate commerce when the gasoline, distillate and other petroleum products are immediately and directly used in interstate commerce are exempt. The gasoline, distillate and other motor fuels may be temporarily stored within the state until it is directly and immediately consumed in interstate commerce. (Authorized by K.S.A. 79-3618, K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988.)

92-19-29. Sales in interstate commerce.

When tangible personal property is sold within the state and the seller is obligated to deliver it to a point outside the state or to deliver it to a carrier or to the mails for transportation to a point without the state, the retail sales tax does not apply: *Provided*, The property is not returned to a point within this state. The most acceptable proof of transportation outside the state will be:

(a) A waybill or bill of lading made out to the seller's order calling for delivery; or

(b) An insurance or registry receipt issued by the United States postal department, or a post office department's receipt; or

(c) A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside the state who received the delivered goods.

However, where tangible personal property pursuant to a sale is delivered in this state to the buyer or his agent other than a common carrier, the sales tax applies, notwithstanding that the buyer may subsequently transport the property out of this state. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3606; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

92-19-30. Motor vehicles or trailers; isolated or occasional sale. (a)(1) An isolated or occasional sale of motor vehicle or trailer is a sale made between private individuals or other entities who, at the time of the sale, are not retailers registered to collect and remit sales or use tax on the sale of such a vehicle or trailer.

(2) Kansas motor vehicle dealers and trailer dealers are retailers and cannot make isolated or occasional sales of vehicles or trailers. These deal-

ers shall collect sales tax at the time of the sale on each taxable retail sale of a motor vehicle or trailer.

(b)(1) Unless a sale is one that is excepted from the imposition of sales tax by K.S.A. 79-3603(o) or exempted from tax under K.S.A. 79-3606, and amendments thereto, sales tax shall be levied on the isolated or occasional sale of a motor vehicle or trailer. Tax on the isolated or occasional sale of a motor vehicle or trailer shall be paid to the county treasurer when the purchaser or other transferee applies for a certificate of title or a certificate of title and registration or to the director of taxation, as provided in paragraph (c)(3).

(2) When a person who has acquired a vehicle in an isolated or occasional sales transaction applies for a certificate of title or certificate of title and registration, the county treasurer shall collect the sales tax that is due along with a service fee of 50 cents, and give the applicant a receipt for the tax and fee paid. A certificate of title or certificate of title and registration shall not be issued until the transferee pays the tax and applicable fee or proves to the satisfaction of the county treasurer or the director of taxation that the transfer is not taxable.

(c)(1) County treasurers shall be assisted by the director of taxation or director of vehicles in determining whether or not a transaction is taxable or exempt. Refusal to issue a certificate of title or certificate of title and registration for a vehicle may be requested by the director of taxation or director of vehicles until sales tax is paid. Sales tax shall be collected by a county treasurer if any doubt exists as to an applicant's exemption claim. An applicant who pays sales tax may file a refund claim with the director of taxation if the applicant believes the tax has been erroneously collected by county treasurer or department of revenue.

(2) Each determination made by a county treasurer to exempt an isolated or occasional sale may be reviewed by the director of taxation. Following this review, a sales tax assessment may be issued to the vehicle registrant for any sales tax that is unpaid or underpaid because of clerical error, misinformation, or other cause.

(3) Any sales tax that is finally determined to be due under an assessment shall be paid to the director of taxation. Payment of sales or use tax on isolated or occasional sales of motor vehicles or trailers may be made to the director of taxation instead of the county treasurer, as provided in par-

agraph (b)(1), to correct any other underpayment or as an accommodation to the taxpayer.

(d) As a general rule, the base for computing the tax shall be the actual selling price of the vehicle. However, the tax shall be computed on the fair market value of the vehicle by the county treasurer or the director of taxation under either of the following circumstances:

(1) The selling price of the vehicle is unknown; or

(2) the stated selling price is not indicative of, and bears no reasonable relationship to, the fair market value of the vehicle or the average retail value as shown in the latest publication of the national automobile dealers' association official used car guide book.

(e) The actual selling price shall be the base for computing the tax on the sale of wrecked or damaged vehicles.

(f)(1) "Sale" or "sales" means the exchange of property, a sale for money, and every other transaction in which consideration is given, whether conditional or otherwise.

(2) "Vehicle" means motor vehicle or trailer.

(3) "Transferor" means the seller, donor, or other person who sells, gives away, or otherwise parts with the vehicle.

(4) "Transferee" means the purchaser, donee, or other person who purchases, is given, or otherwise acquires ownership of the vehicle.

(g) K.S.A. 79-3603(o), and amendments thereto, which imposes sales tax on isolated or occasional sale of trailers and motor vehicles, excepts the following transfers or sales from the tax imposition on these isolated or occasional sales:

(1) Transfers by an individual to a corporation solely in exchange for stock in the corporation;

(2) transfers from one corporation to another corporation when done as part of the transfer of all the corporate assets; and

(3) sales of automobiles, light trucks, trailers or motorcycles between immediate family members.

(h) "Immediate family member" is any person in a class that is defined by statute to mean lineal ascendants and descendants and their spouses. Since a person may have lineal ascendants and descendants and may also be the spouse of someone who has lineal ascendants and descendants, this class includes the grandfather, grandmother, father, mother, son, daughter, and adopted child of the person; the spouses of these ascendants and descendants; the grandfather, grandmother, father, mother, son, daughter, and adopted child of

the person's spouse; and any other ascendants and descendants that are further removed, including great-grandparents and great-grandchildren. The sale or transfer of an automobile, light truck, trailer or motorcycle between members of this class shall be exempt from sales tax.

(i) Certain transfers of motor vehicles or trailers are not sales, as defined in paragraph (f)(1), and shall not be taxed. These include name changes, transfers by gift, and certain transfers made by operation of law. The following rules shall apply to these transfers.

(1) A transfer shall be presumed to be a gift when the transferee is the spouse, mother, father, brother, sister, child, grandmother or grandfather, aunt, uncle, niece, or nephew of the transferor and money is not exchanged for the vehicle. A gift shall also be presumed when these relatives trade or exchange vehicles and money is not exchanged as part of the trade or exchange. However, if money is exchanged for the vehicle, the transfer shall be taxable, unless the sale is exempted as set forth in subsection (h).

(2) A vehicle transfer by gift is not a sale and shall not be taxed. To qualify as a gift, the vehicle shall be given without any consideration and with an intention on the part of the donor that the transfer is a gift. When the relationship of the parties is not one of the relationships set forth above in paragraph (i)(1), the transferee claiming the transfer is a gift shall submit proof of this claim to the satisfaction of the county treasurer or director of taxation.

(3) The change of an owner's name on the title when there is no actual transfer of vehicle ownership to a different person or entity is not a sale and shall not be taxed. However, the transfer of a motor vehicle or trailer from a corporation to an individual shall be taxed since there is a change of ownership from one legal entity to another. The vehicle transfer shall be presumed to be the corporation's payment of a wage, dividend, bonus, or other benefit to the officer, employee, shareholder, or other transferee.

(4) A transfer to an heir or legatee by will or pursuant to the inheritance or intestacy laws of a state is not a sale and shall not be taxed. A certified copy of the probate court order making the distribution shall be filed with the county treasurer.

(5) The sale to a person who takes title to a vehicle with the intention of transferring to the winner of a drawing or raffle shall be taxed. The subsequent transfer of the vehicle to the winner

of a drawing or raffle is a gift from the donor to the winner and shall not be taxed. When a donor pays a motor vehicle dealer for a vehicle and the vehicle is transferred from the dealer directly to the winner of a drawing or raffle, the gift is considered to be the payment made for the automobile rather than the automobile itself, and the winner shall be liable for the sales tax that is charged by the dealer on the vehicle sale. Whenever a vehicle is won as a prize and sales tax has not been paid by either the vehicle donor or vehicle winner to this state or another state, the winner shall pay Kansas sales or use tax when the vehicle is registered with the county treasurer.

(6) When the title to a vehicle is transferred to the holder of an encumbrance as a result of repossession under the terms of a written agreement entered into at the time of original purchase by the purchaser and encumbrance holder, the transfer is not a sale and shall not be taxed. However, any registration or subsequent sale of the vehicle by the encumbrance holder shall be taxed.

(7) When a lender grants a debtor permission to redeem a vehicle pursuant to K.S.A. 84-9-506, and amendments thereto, the redemption of the vehicle by the debtor is not a sale and shall not be taxed.

(8) When a lien holder acquires title to a vehicle through a court-ordered foreclosure of a mechanic's lien, landlord's lien, storage lien, or other statutory lien, the transfer of title to the lien holder shall be exempt if the lien holder does not register the vehicle. However, any registration or subsequent sale of the vehicle by the lien holder shall be taxed. The redemption of a vehicle from a lien holder by a debtor who satisfies the underlying debt is not a sale and shall not be taxed.

(j) The following transfers shall be considered sales, and shall be subject to sales tax.

(1) K.S.A. 79-3602(h)(2), and amendments thereto, allows a credit or discount for a vehicle that is traded for another vehicle. When vehicles of different value are traded by private individuals, the person who pays cash or tenders some other consideration in addition to the vehicle being traded or exchanged shall pay sales tax on the amount of the cash payment or on the fair market value of the consideration. In this trade, sales tax shall not be due from the person who traded or exchanged a vehicle but did not pay any additional cash or provide any additional consideration. Each person claiming a sales tax credit or discount for a vehicle that is traded shall file an affidavit with

the county treasurer on a form furnished by the department of revenue that contains information necessary to support the credit or discount being claimed.

When the stated cash amount or stated value of the other consideration is not indicative of, and bears no reasonable relationship to, the difference between the fair market value of the vehicle traded and the fair market value of the vehicle received by the purchaser, the tax shall be computed by the county treasurer or the director of taxation on the difference between the fair market value of the vehicles or the difference between the average retail value of the vehicles as shown in the latest publication of the national automobile dealers' association official used car guide book.

(2) The purchase of a vehicle that the purchaser intends to give to someone else shall be taxed, even though tax is not due on the subsequent transfer from the purchaser to the donee.

(3) A transfer of a vehicle from a partner to the partnership or from a partnership to a partner shall be presumed to be a taxable transfer. A transfer from the partner to the partnership shall be presumed to be made in consideration of an increased partnership interest. A transfer from the partnership to the partner shall be presumed to be made for services rendered to the partnership or for other value passing between the partner and the partnership.

(4) If a donor gives a donee a gift of cash or other property for the purpose of purchasing a vehicle, the donee shall be liable for the tax, if the vehicle is purchased.

(5) The transfer of a vehicle in exchange for the transferee's assumption of an obligation to pay all or part of an encumbrance on the vehicle is a sale and shall be taxed, unless the sale is between immediate family members or is exempt under K.S.A. 79-3606, and amendments thereto. When the transfer does not involve a gift and is not otherwise exempt, the tax base shall be the sum of any payment made by the buyer to the seller plus the amount of the encumbrance being assumed. Sales tax shall be computed as set forth in subsection (d) of this regulation if this amount is not indicative of, or bears no reasonable relationship to the fair market value of the vehicle. When the transfer represents a gift of part of the value of the vehicle that has been established in accordance with paragraphs (i)(1) or (i)(2) of this regulation and is not otherwise exempt, the tax base shall be the sum of any payments made by the

buyer to the seller plus the amount of the encumbrance being assumed, regardless of the fair market value of the vehicle.

(6) When a vehicle is purchased to replace a vehicle that has been stolen or destroyed by accident, fire, or other adversity, the purchase of the replacement vehicle is not exempt and shall be taxed. Each purchase of a replacement vehicle shall be taxed whether the replacement vehicle is purchased by the owner of the vehicle that was stolen or destroyed or by an insurance company that is obligated to provide a replacement vehicle.

(7) A transfer of a vehicle from a corporation to an officer, shareholder, board member, or employee shall be presumed to be a taxable transfer and shall be presumed to be made in consideration for services rendered to the corporation or for other value passing between the corporation and transferee.

(k)(1) Each transferee claiming exemption shall complete an affidavit form furnished by the department of revenue and file it with the county treasurer when the vehicle is registered. The exemption affidavit shall be completed in its entirety and shall contain the names, addresses, and telephone numbers of the transferor and transferee; the make, year, model and body style of the motor vehicle or trailer; and any additional information that is needed to support the exemption claim. The affidavit shall contain facts in detail sufficient to clearly bring the transferee within the exemption being claimed.

(2) Each transferee claiming a family relationship as the basis for the exemption of a vehicle sale or as the basis for the presumption of a gift may be required to file an additional affidavit that establishes the relationship.

(3) Exemption affidavits that are not correct in both substance and form shall not be accepted by the county treasurer, and the tax shall be collected if any doubt exists as to the validity of the exemption claim.

(4) Any taxpayer may file a refund claim with the director of taxation if the taxpayer believes the tax has been erroneously collected by the county treasurer or the director.

(l)(1) When a motor vehicle or trailer is purchased out of state in an isolated or occasional sale, the purchaser shall pay Kansas state and local use tax to the county treasurer upon application for a certificate of title or certificate of title and registration. When a motor vehicle or trailer is purchased from an out-of-state dealer who is not

registered to collect and remit Kansas state and local retailers' use tax and has not collected sales tax on the sale for the state of purchase, the purchaser shall pay Kansas state and local use tax to the county treasurer upon application for a certificate of title or certificate of title and registration.

(2) When the purchaser has paid state and local sales tax to another state at a rate that is less than Kansas state and local use tax rates where the vehicle is registered, the purchaser shall pay Kansas state and local use tax to the county treasurer at a rate that is equal to the difference between the combined state and local tax rates for the Kansas location and the combined state and local tax rates that were used to determine the tax paid to the other state. (Authorized by K.S.A. 8-132, 79-3618; implementing K.S.A. 8-132, K.S.A. 79-3602, 79-3603, 79-3604; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; amended June 26, 1998.)

92-19-30a. Motor vehicles or trailers. Sales tax shall be imposed on the total selling price of each motor vehicle or trailer to the ultimate user or consumer. The total selling price includes all tangible personal property mounted, installed, applied or otherwise attached or affixed to the motor vehicle or trailer. For sales tax purposes, tangible personal property is not separable from the motor vehicle or trailer to which it is mounted, installed, applied or otherwise attached or affixed.

When calculating sales tax on the retail sale of a motor vehicle or trailer, the retailer shall not exclude or deduct for the tangible personal property, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether separately charged or segregated on the same contract or invoice. Any charge attributed to the tangible personal property mounted, installed, applied or otherwise attached or affixed to a motor vehicle or trailer cannot be separately billed or segregated on an invoice or contract in order to qualify for an isolated or occasional sale exemption. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988.)

92-19-31. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1981 Supp. 79-3603, 79-3606; modified, L. 1979, Ch. 349, May 1, 1979; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982; revoked May 1, 1988.)

92-19-32. (Authorized by K.S.A. 79-3618, K.S.A. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; amended May 1, 1988; revoked June 26, 1998.)

92-19-33. Permanent extensions of time to file sales and use tax returns. (a) A permanent extension of not more than 60 days, may be granted by the director of taxation, for good cause, for filing of sales or compensating use returns and for payment of the tax that is due. A request for an extension shall meet the following requirements:

- (1) Be submitted in writing;
- (2) explain why accurate returns cannot reasonably be filed by the normal due date; and
- (3) set forth any additional facts relied on to establish good cause for granting the extension.

(b) The taxpayer shall be notified in writing when the request is granted or denied. The grant of a permanent extension may be conditioned on the taxpayer's acceptance of and compliance with a payment plan for remitting any additional interest that may be due because of the extension. (Authorized by K.S.A. 2000 Supp. 79-3618, K.S.A. 79-3707; implementing K.S.A. 79-3607, K.S.A. 2000 Supp. 79-3706; effective May 1, 1979; amended May 1, 1984; amended July 27, 2001.)

92-19-34. (Authorized by K.S.A. 79-3618; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked June 26, 1998.)

92-19-35. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3616; effective May 1, 1979; amended May 1, 1986; revoked June 26, 1998.)

92-19-35a. Securities: surety bonds, escrow accounts, and cash bonds. (a) General. Pursuant to K.S.A. 79-3616 and amendments thereto, a retailer may be required to post a security before or after a registration certificate is issued. If a security is required, a written demand for security shall be sent to the retailer. If a person fails or refuses to post a security as required within 30 days of mailing of the notice, issuance of a registration certificate may be refused by the director of taxation, or a certificate that has been issued may be cancelled by the director.

(b) Refusal to issue a certificate or cancellation of a certificate.

- (1) If a written demand for a security is sent to

a person who is applying for a registration certificate, the person who receives the demand shall either post the security or object to the demand. To object, the person shall submit the objection in writing within 30 days from the date that the demand was mailed. Once an objection is received, a hearing shall be scheduled by the secretary or secretary's designee to determine whether the posting of the security is an appropriate prerequisite for issuing the registration certificate.

(2) If an existing registration certificate is to be cancelled because a security has not been posted within 30 days of the demand, the certificate holder shall be notified in writing of the director's intention to cancel the certificate and the date when the cancellation is final. The certificate shall be cancelled on the date specified in the notice, unless the certificate holder objects in writing within 30 days from the date that the notice of intention to cancel is mailed. If a certificate holder objects to the cancellation, a hearing shall be scheduled by the secretary or secretary's designee to determine whether cancellation of the certificate for failure to post a security is appropriate.

(c) When required for active businesses.

(1) Businesses with chronic delinquencies. A retailer shall post a security if the retailer has had four or more delinquencies during the last 24 months for sales and use taxes or if the retailer has had six or more delinquencies during the last 24 months for taxes imposed under chapter 79 of the Kansas statutes annotated and amendments thereto, including withholding tax, income tax, sales and use taxes, liquor excise tax, and all other excise taxes. Delinquencies shall include the failure to file a return, the filing of a late return, the filing of an improper return, nonpayment, late payment, and payment by an insufficient funds check. The simultaneous late filing of the return and the late payment of tax shall count as one delinquency. A delinquency shall be excused if the retailer establishes that, had a timely request been made under K.A.R. 92-19-5a, good cause would have existed for an extension.

(2) When required of a new applicant. A security shall be required of a new applicant if the applicant is substantially similar to a person who would have been required to post a security because of past delinquencies. An applicant shall be deemed to be similar to the extent that the applicant is owned or controlled by a person or persons who owned or controlled a previously registered

retailer that became delinquent. Substantial similarity may be established by facts that tend to show common ownership or control of both businesses.

(d) Determination of security amount. The amount of a security for an annual filer shall be \$25, and the security shall be made only as a cash bond. If a security is required of a monthly or quarterly filer, the amount of the security shall be fixed by the director and shall be equal to at least the average tax liability for state and local taxes for six months, or \$1,000, whichever is greater. The average tax liability shall be based on the previous 12-month period, if there was a reporting history for those months. Amounts based on the average liability for a monthly or quarterly reporting period shall be rounded to the next higher, even \$100 amount. If a retailer has no reporting history, the amount of the security may be based on the estimated tax liability as shown on the registration application, the predecessor's tax liability at the location specified on the registration application, and other factors that are based on the department's experience with similar businesses. After one year, the security amount fixed by the director for a new account may be increased or decreased based upon the retailer's compliance record, payment history, and annual average sales tax liability.

(e) Types of security. Acceptable types of security shall include the following:

(1) Money posted or deposited with the department as a cash bond. A cash bond may be required by the director to be paid in guaranteed funds by means of a cashier's check or money order. Cash bonds shall not pay interest;

(2) a surety bond issued by a bonding company that is authorized to do business in Kansas by the Kansas insurance commission. Each surety bond shall be issued on a form prescribed by the department and shall bear the seal of the insurance company, the effective date, and the signature of the applicant. If a bond is signed by an agent or other attorney-in-fact for the insurance company, the bond shall be accompanied by a power of attorney that grants to the attorney-in-fact the power to obligate the company for this type of liability; and

(3) an escrow account with a Kansas financial institution that is entered into on a form prescribed by the department. Escrow funds may be held in a savings account or certificate of deposit and shall be payable to the department upon demand. Interest earned on an escrow account may

be paid to the retailer unless the director has made demand for payment on the account. Other than interest, an escrow account shall not be accessible to the retailer or to creditors of the retailer until the account is released in writing by the director.

(f) Release or cancellation of the security. A security that has been posted by a retailer who files on a monthly or quarterly basis may be released to the retailer upon request if the retailer has, for 24 consecutive months, timely filed and paid all returns required to be filed under chapter 79 of the Kansas statutes annotated, and amendments thereto. The 24-month compliance requirement shall begin on the day the security is received by the department. If a retailer does not meet the compliance requirements, the security shall continue to be required until the taxpayer has been in compliance for 24 consecutive months from the date of the latest noncompliance. A \$25 cash bond required to be posted by a retailer who files on an annual basis shall be held by the department until the retailer terminates business or is required to file returns on a monthly or quarterly basis. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 79-3616; effective Aug. 23, 2002.)

92-19-36. Jeopardy assessments. The following actions by any person liable for tax under the Kansas retailers' sales tax act shall be deemed reason to believe that a taxpayer is about to depart from the state, or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act which tends to prejudice, jeopardize, or render wholly or partly ineffectual the collection of sales tax: (a) Failure to file sales tax returns after notice as provided by K.S.A. 79-3613, and subsequent termination of business operations by the retailer; or (b) failure to file sales tax returns after notice as provided by K.S.A. 79-3613, and continuation of the act of making retail sales. (Authorized by K.S.A. 79-3610, 79-3618; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979.)

92-19-37. Natural gas, electricity, heat and water; sales to residential premises. (a) Where sales of natural gas, electricity, heat and water delivered through mains, lines or pipes are made to multi-family dwellings or other buildings in which residential premises are not individually metered and billed, only the pro rata portion of these sales equal to the percentage of the building actually occupied as residential premises shall be

subject to exemption. As used in this regulation, "residential premises" shall have the meaning ascribed to it in K.A.R. 92-19-38.

(b) Where utility services are not metered individually between residential and commercial use in combination purpose buildings, the occupant owner or lessee shall file an exemption certificate with each retailer providing sales of exempted commodities. The exemption in this case shall be prorated based on the portion of the commodities used in portions of the premises actually occupied as a residence and used for noncommercial purposes. Formulas and computations used in establishing the percentage of exempt use shall be available for inspection by the department of revenue at any time. Sales of otherwise taxable materials or services shall not be exempted by virtue of being sold in connection with commodities exempt from sales tax hereunder. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1981 Supp. 79-3606; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982.)

92-19-38. Propane gas, LP-gas, coal, wood, and other fuel sources; sales to residential premises. (a) Sales of propane gas, LP-gas, coal and wood for the production of heat or lighting for the noncommercial use of an occupant of residential premises are exempt from sales tax. Sales of bottled water or such nonprimary heat or light sources as charcoal, candles, canned heat, batteries, lighter fluid or matches are not exempt. Sales of otherwise taxable materials or services are not exempted by virtue of being sold in connection with commodities exempt from sales tax hereunder.

(b) As used in this regulation and K.A.R. 92-19-37 and 92-19-40, "residential premises" means and includes any building or structure, or portion thereof, used for human habitation. Such term shall not include travel trailers or recreational vehicles. (Authorized by K.S.A. 79-3618, K.S.A. 1979 Supp. 79-3606; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980.)

92-19-39. (Authorized by K.S.A. 79-3618, K.S.A. 1979 Supp. 79-3606; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked June 26, 1998.)

92-19-40. Intrastate telephone and telegraph services; sales for noncommercial use. (a) Each sale of a telephone or telegraph

service which is classified and billed for commercial use by the retailer providing the service shall be taxed. Each sale of an intrastate telephone and telegraph service for noncommercial use, other than noncommercial intrastate long-distance telephone service, is not taxable. Exempt telephone service includes ordinary exchange services, extra listings, joint-user service, telephone access charges, installation and repair services. Each sale, lease or rental of telephones, equipment and facilities and tangible personal property furnished in connection with, supplemental to, or associated with telephone usage shall be subject to sales tax.

(b) As used in this regulation, "residential premises" shall have the meaning ascribed to it in K.A.R. 92-19-38 and amendments, and "long distance service" means message toll services, but does not include private line or foreign exchange services. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; amended May 1, 1988.)

92-19-41. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3603 as amended by L. 1986, Ch. 386, Sec. 1; effective, E-81-1, Jan. 10, 1980; effective May 1, 1980; amended May 1, 1987; revoked May 1, 1988.)

92-19-42. Sales of drugs and pharmaceuticals to veterinarians. Sales of drugs and pharmaceuticals to veterinarians for use by the veterinarians in the professional treatment of animals raised for human consumption or for producing dairy products shall be exempt from Kansas sales tax. Veterinarians shall provide vendors with exemption certificates covering the sale of such drugs and pharmaceuticals. Sales of drugs and pharmaceuticals to veterinarians for use by the veterinarians in the professional treatment of any other animals shall be subject to Kansas sales tax. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1980 Supp. 79-3602, 79-3603, 79-3606; effective May 1, 1981.)

92-19-43. Tax due upon registration of vehicle by dealer; exception; credit upon subsequent transfer. (a) The registration of a vehicle by a licensed vehicle dealer pursuant to the provisions of article 1 of chapter 8 of Kansas Statutes Annotated shall constitute the taking of tangible personal property from a stock of goods

within the meaning of K.A.R. 92-19-11 and amendments thereto. Except as provided in subsections (b) and (c), sales tax shall be due and payable to the county treasurer at the time the dealer makes application for the registration of the vehicle.

(b) Notwithstanding the provisions of subsection (a), whenever a vehicle is registered by a licensed vehicle dealer for the purpose of subsequently leasing the vehicle, sales tax shall be collected by the licensed vehicle dealer on each lease payment made by the lessee. At the time of making application for registration, the dealer shall provide the county treasurer with a resale exemption certificate pursuant to K.A.R. 92-19-25.

(c) Whenever a vehicle which has been registered by a licensed vehicle dealer, and upon which the sales tax has been paid, is sold or is otherwise transferred in a taxable transaction within 15 days from the date the vehicle was registered by the dealer, the taking of the vehicle from a stock of goods and the subsequent transfer shall be deemed to constitute a single transaction for sales tax purposes. Upon the subsequent transfer, the dealer shall collect the sales tax from the ultimate consumer and may apply for credit from the director of taxation for the tax paid by the dealer to the county treasurer. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1982 Supp. 79-3602, 79-3603; effective May 1, 1983.)

92-19-44. Sampling methods. At the discretion of the director of taxation, sampling principles or methods may be used in lieu of a 100% examination of records in conducting a sales or use tax audit. (Authorized by K.S.A. 79-3618, 79-3707; implementing K.S.A. 79-3609, 79-3707; effective May 1, 1987.)

92-19-45. Audit facilities. Each taxpayer shall furnish reasonably sufficient work space, lighting, and working conditions for department of revenue agents for the conducting of sales or use tax audits. (Authorized by K.S.A. 79-3618, 79-3707; implementing K.S.A. 79-3609, 79-3707; effective May 1, 1987.)

92-19-46. Selling price. (a) Selling price is the total consideration given in each transaction, whether in the form of money, rights, property, promise or anything of value, or by exchange or barter. The key element in imposing sales tax on a transaction is not based on what a transaction

may be called or termed, but on the operation of the transaction. The term selling price includes the following:

(1) The total monetary value of the consideration of all those things which in fact are, or are promised to be paid by the consumer to a seller in the consummation and complete performance of a retail sale, whether or not the seller receives any benefit from the consideration;

(2) the total cost to the consumer without any deduction or exclusion for the cost of the property or service sold, labor or service used or expended, materials used, losses, overhead or any other costs or expenses, or profit, 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; and

(3) all transactions in which a person secures for a consideration, the use of tangible personal property or services and includes transactions which may be termed royalties or licenses.

(b) Any discounts allowed and credited by the retailer are excludable from the selling price. However, all transportation, freight, handling, drayage or other similar charges are to be included in the selling price, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether the charges are separately billed or segregated on the same bill. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988.)

92-19-47. "Retailer." (a) "Retailer" means any person regularly engaged in the business of selling tangible personal property at retail to the final user or consumer, and not for resale. The principal nature of the seller's business operation is immaterial in making the determination of whether a person is a retailer. The controlling factors are:

(1) whether the sale is to the final user or consumer; and

(2) whether the transaction is a sale of tangible personal property or service which is subject to sales tax.

(b) Sales tax is imposed on retail transactions not exempted by law. Any person generally providing a service which is not taxable is deemed to be a retailer when the person engages in the sale of tangible personal property or taxable services at retail to the final user or consumer and which are not for resale purposes.

(c) "Regularly engaged in the business" means the periodic, habitual or recurring sale of tangible personal property at retail or services subject to sales tax. Any person is deemed to be a retailer if the person sells tangible personal property at retail or provides taxable services in the normal course of its business operations, notwithstanding the facts that the sales may be few or infrequent, or that retail sales may comprise a small portion of the total gross receipts. If any person acquires tangible personal property for the purpose of resale, the person acquiring the property is deemed to be a retailer and shall collect sales tax on the gross receipts received from the retail sale thereof. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988.)

92-19-48. Reserved.

92-19-49. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, K.S.A. 79-3609, K.S.A. 1986 Supp. 79-3607, K.S.A. 1986 Supp. 79-3610 as amended by L. 1987, Ch. 391, Sec. 1; effective May 1, 1988; revoked June 26, 1998.)

92-19-49a. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3609, K.S.A. 79-3650; effective June 26, 1998; revoked May 27, 2005.)

92-19-49b. Returned goods. (a)(1) Each retailer shall be entitled to a deduction or credit for taxes reported on the retailer's sales tax return if goods are later returned by the consumer and the retailer repays to the consumer the full selling price and all associated sales taxes that originally were collected and remitted on the sale of the goods. This repayment to the consumer may be made by credit or refund.

(2) If a retailer reduces the amount refunded to the consumer on returned goods to recover depreciation, consumer usage, or other costs, the amount of the reduction shall be considered a charge by the retailer to the consumer for the use of the goods and shall be subject to sales tax as if it were a rental. The amount of tax refunded to the consumer shall be reduced accordingly.

(3) If a retailer charges a restocking or reshelving fee after goods are returned, this fee shall not be taxable. A restocking or reshelving fee shall be defined as a fee charged by a retailer to cover the time and expense in returning goods to resale in-

ventory if the consumer has not used the goods in a way that decreases their value.

(b) Any retailer that reported and remitted the tax to the department on returned goods may take the deduction during the reporting period in which the consumer is refunded the tax. The retailer shall maintain records that clearly reflect and support a claim for any such deduction or refund.

(c) Except for claims involving returned goods, a retailer shall not take a deduction or credit for a refund claim on the retailer's sales tax return but shall submit a written refund application to the department, in accordance with K.A.R. 92-19-49c.

(d) Returned goods shall not include goods accepted in trade or barter and goods repossessed or recaptured by legal process, abandonment of contract, or voluntary surrender. Repossessed goods shall be treated as specified in K.A.R. 92-19-10.

(e) Notwithstanding any other provision of this regulation, any motor vehicle manufacturer, manufacturer's agent, or authorized dealer may apply to the department for a refund or take a deduction during the reporting period if a consumer returns a motor vehicle in accordance with K.S.A. 50-645, and amendments thereto, and is refunded the total amount that the consumer paid for the vehicle, including sales tax, less a reasonable allowance for the customer's use of the vehicle, which shall include the sales tax associated with that use. The manufacturer, agent, or dealer shall maintain records that clearly reflect the acceptance of the returned vehicle under K.S.A. 50-645 and amendments thereto, the amount of the refund, and the amount of taxes refunded. (Authorized by K.S.A. 2004 Supp. 75-5155 and K.S.A. 2004 Supp. 79-3618; implementing K.S.A. 2004 Supp. 79-3607 and K.S.A. 2004 Supp. 79-3609; effective May 27, 2005.)

92-19-49c. Refund applications; refund claims; required forms. (a) Definition.

(1) "Refund claim" shall mean an application for the refund of sales or compensating use tax, penalty, or interest submitted in writing on a form prescribed by the department that has been completed and is accompanied by all documentation needed to verify and process the claim. A refund application that is incomplete or is not documented as required by this regulation shall not be considered to be a refund claim. As used in these regulations, the term "refund claim" may include

a claim for payment, a credit, or an entitlement to a deduction.

(2) Each refund application shall be submitted on the appropriate form prescribed by the department for the kind of refund being requested. The refund application may be required by the department to be filed electronically. Refund application forms may be obtained from the department.

(3) Each agent, representative, or other third party filing a refund application on behalf of another shall submit a power of attorney that authorizes the agent, representative, or other third party to act on behalf of the claimant.

(b) Retailer-filed refund applications.

(1) Any business or individual who is registered with the department as a retailer and who reported and remitted sales tax to the department that was not owed, was remitted in error, or was an overpayment may apply for a refund. Each registered retailer shall have a continuing duty to correct any errors in sales tax returns filed with the department and to enable purchasers to obtain refunds of taxes that were overpaid or paid in error.

(2) Each refund claim filed by an entity that files sales or compensating use tax returns shall be treated as an application to adjust or amend the return. The amended tax return shall be subject to verification by examination of the taxpayer's records.

(3) Refund applications shall be filed on the appropriate form and shall be completed in the manner prescribed by the form. Each refund application shall contain all the information requested and shall be accompanied by all additional documentation prescribed by the form and this regulation that is needed to determine the validity of the claim and verify and process the claim. Each refund application that contains insufficient information or documentation to verify and process the application shall be returned to the applicant with directions to file a new, complete application. If a refund application has been returned by the department, a refund claim shall not be considered to have been filed until a new application is submitted that contains sufficient information and is supported by sufficient documentation to verify and process the claim.

(4) The information provided on each retailer-filed refund application form or accompanying the form shall include the following:

(A) An amended return for each period for

which a refund is sought, which shall contain the retailer's current name, mailing address, employee identification number, and Kansas sales tax registration number;

(B) the name and telephone number of the person whom the department should contact if additional information is needed;

(C) an explanation of the reason why a refund is due, which may include an overpayment due to mathematical or clerical errors, the payment of tax on an exempt sale, or other explanation. If applicable, the explanation shall include a detailed, factual description of how the items sold were used by the consumer and an explanation of the legal theory that underlies the refund claim. A statement of such usage that only references Kansas statutes and Kansas administrative regulations shall be deemed an insufficient explanation of the factual basis for a refund;

(D) if tax has been refunded to the consumer, the amount, the name of the refund recipient, and an explanation of how the refund was made, whether by cash, check, credit, or other means;

(E) a schedule listing each invoice in chronological order that includes the name and address of the purchaser, a description of the items sold, the date of purchase, the invoice number, the amount subject to tax, the amount of tax collected, the reporting period and jurisdiction code for the tax, the location of the sale, the account codes, the department codes, and a detailed statement of usage of the item purchased. If the claimant or its agent maintains its records or prepares the schedule in an electronic, machine-sensible format, all schedules submitted to support the refund claim shall be provided in an electronic, machine-sensible format in addition to the paper document;

(F) the signature of the payee or the owner, a partner, or an officer of the business listed as payee, and the signature of the retailer or the owner, a partner, or an officer of the business listed as the retailer; and

(G) any additional information required by the application form that is needed to verify and process the specific refund application, including employment data for a refund pursuant to K.S.A. 79-3606(cc), and amendments thereto.

(5) The documentation provided with a retailer-filed refund application form shall include a copy of each of the following:

(A) A properly completed exemption certificate from the consumer, if the consumer is seeking a refund based on an exemption claim;

(B) if the retailer has refunded taxes to the consumer, a cancelled check or irrevocable credit memo issued by the retailer showing that the retailer has credited or refunded the tax previously collected from the consumer, a written agreement that the refund shall be jointly issued to the retailer and the consumer, or other proof of repayment; and

(C) all invoices pertaining to the schedule required to be submitted under paragraph(b)(4)(E) and any other documentation needed to verify and process the specific refund claim being made in the schedule, which may include credit memos, contracts, job cost records, tax accrual worksheets with refund items identified, charts of account, and any other documentation, including employment data for claims related to K.S.A. 79-3606(cc), and amendments thereto.

(6) Each business that files consumers' compensating use tax returns with the department shall comply with the requirements of this subsection when filing a refund claim for consumers' compensating use tax that the business accrued, reported, and paid to the department.

(c) Consumer-filed refund applications.

(1) Except as authorized by K.S.A. 79-3650 and amendments thereto and as provided by paragraph (b)(6) of this regulation, a consumer seeking a refund of retailers' sales or compensating use tax shall request the refund from the retailer that collected the tax on the sale.

(2)(A) A consumer that paid tax to a retailer may apply directly to the department for a refund if the consumer submits an application and supporting documentation together with an affidavit that verifies any of the following:

(i) The retailer that collected the tax is no longer in business.

(ii) The retailer has moved and cannot be located.

(iii) The retailer is insolvent and is financially unable to make the refund.

(iv) The consumer has attempted in good faith to obtain the refund from the retailer and can document that the retailer refuses or is unavailable to refund the tax or has refused to act in a timely manner on the consumer's refund application.

(B) The documentation required to demonstrate that a retailer refused to refund the tax under paragraph (c)(2)(A)(iv) shall include a written denial of the consumer's refund request issued by the retailer. The documentation required to demonstrate that a retailer did not act on the refund

request in a timely manner under paragraph (c)(2)(A)(iv) shall include a copy of the refund request sent to the retailer by certified mail at least 60 days before the consumer filed the refund application with the department. This documentation shall include the consumer's refund application, a copy of the certified mail receipt, and the consumer's refund application, a copy of the certified mail receipt, and the consumer's affidavit stating that it acted in good faith in attempting to obtain the refund from the retailer.

(C) The consumer's affidavit shall state the date that the refund request was submitted to the retailer and shall identify the information and documentation included with the request. A copy of each piece of documentation shall be submitted to the department with the consumer's affidavit.

(D) The retailer may be contacted by the department to confirm that the consumer has acted in good faith in attempting to obtain the refund from the retailer. As used in this regulation, "good faith" shall mean that the consumer has provided the retailer with all of the information and documentation needed to validate and process the refund request, has complied with the requirements specified in K.S.A. 79-3650(a) and amendments thereto, and has otherwise made a reasonable attempt to obtain the refund from the retailer. The mere fact that a retailer agrees to allow the consumer to file a refund application directly with the department shall not satisfy the requirements of K.S.A. 79-3650(a), and amendments thereto, and shall not constitute a good faith attempt to obtain the refund from the retailer.

(E) For purposes of refund claims filed with the department pursuant to K.S.A. 79-3650 and amendments thereto, if the director of taxation finds that the retailer failed to act on the consumer's refund request in a timely manner, the period of limitations applicable to the filing of the consumer's refund claim may be extended by the director by not more than 90 days. As used in K.S.A. 79-3650 and amendments thereto and in this regulation, "timely manner" shall mean within 60 days after the retailer received written notice of the consumer's refund request. As used in K.S.A. 79-3650 and amendments thereto, "proper showing" shall mean the submission to the director of the consumer's affidavit, the completed refund application, and all supporting information and documentation that is needed to verify and process the refund.

(F) If the director finds that a refund applica-

tion, information, and documentation submitted by a consumer to a retailer are insufficient to verify and process the refund claim, the limitations period for filing the consumer's refund claim with the department shall not be extended, and the refund application shall not be reviewed by the department but shall instead be returned to the consumer.

(3) The information provided on each consumer-filed refund application form or accompanying the form shall include the following:

(A) The consumer's name, current mailing address, and telephone number;

(B) the name and telephone number of the person whom the department should contact if additional information is needed;

(C) the retailer's name, current mailing address, and telephone number;

(D) a description of the items purchased, the date of purchase, the location of the purchase, the invoice number, the amount subject to tax, and the amount of tax paid;

(E) if applicable, a properly completed exemption certificate. The exemption certificate shall include a detailed factual description of how the items sold were used by the consumer. A statement of usage on an exemption certificate that only references Kansas statutes and Kansas administrative regulations shall be deemed an insufficient explanation of the factual basis for a refund;

(F) an explanation of the reason why a refund is due. If applicable, this explanation shall include a detailed, factual description of how the items sold were used by the consumer. A statement of usage that only references Kansas statutes and regulations shall be deemed an insufficient explanation of the factual basis for a refund;

(G) a schedule listing each invoice in chronological order that includes the name and address of the retailer, a description of the items sold, the date of purchase, the invoice number, the amount subject to tax, the amount of tax paid, the reporting period and jurisdiction code for the tax, the account codes, the department codes, the location of the purchase, and a detailed statement of usage for the purchase. If the claimant or the claimant's agent maintains its records or prepares the schedule in an electronic, machine-sensible format, all schedules submitted to support the refund claim shall be provided in an electronic, machine-sensible format in addition to the paper document;

(H) the signature of either the consumer or a

business owner, partner, or officer of the business; and

(I) any additional information required by the form that is needed to verify and process the refund, including employment data for a refund pursuant to K.S.A. 79-3606(cc), and amendments thereto.

(4) The documentation provided with each consumer-filed refund application form shall include a copy of each of the following:

(A) A properly completed exemption certificate from the consumer, if the consumer is claiming refund entitlement based on an exemption;

(B) all original invoices pertaining to the refund claim placed in chronological order, with monthly subtotals, credit memos, contracts, cancelled checks, tax accrual worksheets, charts of accounts, and any other documentation required to verify the specific refund claim being made; and

(C) a written statement signed by the consumer stating that the consumer has not and will not seek a duplicate refund from the retailer. (Authorized by K.S.A. 2004 Supp. 75-5155 and K.S.A. 2004 Supp. 79-3618; implementing K.S.A. 2004 Supp. 79-3607, K.S.A. 2004 Supp. 79-3609, and K.S.A. 2004 Supp. 79-3650; effective May 27, 2005.)

92-19-49d. Review of refund applications; processing of refund claims. (a) Statute of limitations.

(1) Whenever a retailer or consumer that has filed a sales or compensating use tax return seeks a refund for the erroneous payment of the tax, penalty, or interest, the refund claim shall be filed within three years from the due date of the return for the reporting period as specified in K.S.A. 79-3607, and amendments thereto, unless the director of taxation has extended the time for filing the refund request pursuant to K.S.A. 79-3650(b), and amendments thereto.

(2) A written agreement may be entered into by the secretary and the taxpayer to extend the period within which the taxpayer may file a refund application, and an assessment may be made by the secretary. If such a mutual agreement is entered into, any additional interest due on an assessment that is in excess of 48 months shall be waived. This agreement shall be entered into before the expiration of the three-year statute of limitations.

(3) The provisions of K.S.A. 60-206, and amendments thereto, for the computation of time

shall apply to determine the timeliness of the filing of a refund claim. Each refund claim shall be presumed to have been filed with the department on its postmark date.

(4) A person against whom an assessment or administrative decision has become final shall not be entitled to pay the amount of the assessment and then file a refund claim for the amount paid.

(b) Incomplete refund applications.

(1) A refund application that is incomplete, not supported by the required documentation, or otherwise fails to meet the requirements specified in K.A.R. 92-19-49c, whether submitted to the department or to a retailer, shall not be considered to be a refund claim or refund request for the purpose of any of the following:

(A) Tolling the statute of limitations provisions of K.S.A. 79-3609, and amendments thereto;

(B) commencing the running of the 60-day provision of K.S.A. 79-3609(d), and amendments thereto, for payment of refunds without interest; or

(C) extending the time for filing the refund application or refund request beyond the three-year statute of limitations under the provisions of K.S.A. 79-3650(b), and amendments thereto.

(2)(A) If a refund application is incomplete, not supported by the required documentation, or otherwise fails to meet the requirements specified in K.A.R. 92-19-49c, the substance or merits of the incomplete refund application shall not be reviewed by the department, and the incomplete application shall be returned to the applicant. At that time, the applicant shall be notified in writing of the actions, corrections, information, or additional documentation that is needed to complete a new refund application. The applicant also shall be provided with a written description of the method by which an informal conference may be requested pursuant to K.S.A. 79-3226, and amendments thereto, to request a review of the determination that the refund application is incomplete.

(B) Each review of the department's determination that the taxpayer submitted a refund application that was incomplete, not supported by the required documentation, or otherwise failed to meet the requirements specified in K.A.R. 92-19-49c shall be limited to determining whether the refund application, as originally submitted, complied with the requirements of K.A.R. 92-19-49c by providing sufficient information and documentation to allow the refund application to be

verified and processed. If, upon review at the informal conference, it is determined that the refund application failed to meet the requirements specified in K.A.R. 92-19-49c when submitted so that the refund application could not be verified and processed, the applicant shall be required to file a new refund application for the refund being claimed.

(c) Review of refund claims.

(1) Each refund application that meets the requirements specified in K.A.R. 92-19-49c so that it can be verified and processed shall be reviewed by the department as a refund claim and its validity determined. Each claimant shall be notified in writing of the department's determination and, if the refund claim is denied in whole or in part, shall be provided with a written description of the method by which an informal conference pursuant to K.S.A. 79-3226, and amendments thereto, may be requested. Each denial of a refund claim by the department shall be final, unless the claimant timely requests an informal conference pursuant to K.S.A. 79-3226, and amendments thereto.

(2) Once an informal conference is requested, an informal conference shall be held by the secretary or designee, and a written final determination shall be issued by the secretary or designee, in accordance with K.S.A. 79-3226, and amendments thereto. The written final determination shall constitute a final agency action subject to administrative review by the Kansas board of tax appeals, as provided in K.S.A. 74-2438 and amendments thereto.

(d) Offsetting overpayments against deficiencies.

(1) If the department determines that a refund is due, the refund may first be set off against any outstanding tax liability for a tax that is administered by the department and owed by the person to whom the refund is ultimately due. Any refund amount that remains may be set off against any other outstanding state liabilities or shall be refunded. A retailer shall be considered to be the person to whom the refund is ultimately due under this subsection if the retailer previously credited or refunded the tax to the consumer. This person shall be provided with written notice of the setoff and informed of the right to seek administrative review of the setoff pursuant to K.S.A. 79-3226, and amendments thereto.

(2) If the department determines, upon review of a tax return, that there has been an overpay-

ment of tax for the taxable period to which the return relates, either of the following actions may be taken by the department:

(A) Crediting the overpayment amount to the taxpayer without requiring the taxpayer to file a refund claim; or

(B) setting off the overpayment in accordance with subsection (c).

(e) Audits.

(1) If an audit by the department discovers that both underpayments and overpayments of a tax have been made in different reporting periods, the tax overpayments shall be credited against the tax underpayments if the taxpayer submits an affidavit that meets the requirements of paragraph (e)(2).

(2) To be entitled to the provision specified in paragraph (e)(1), the taxpayer shall provide the department with an affidavit signed by the taxpayer's owner, partner, or corporate officer that attests that the taxpayer has not claimed a duplicate refund or taken a credit on a return and will not claim a duplicate refund or credit for those taxes in the future. A retailer shall not be allowed to utilize the provisions of this subsection or any other setoff provisions for taxes that the taxpayer collected from its customers and has not credited or refunded to the customer.

(3) Once an audit engagement letter is issued by the department to a taxpayer, the taxpayer shall submit all refund claims for any tax overpayment that is alleged to have occurred during the audit period to the department to be considered as part of the audit review.

(f) Audits based on sampling.

(1) After a business pays a liability or accepts a refund that was determined under an audit assessment that applied a sampling technique to an established population, the population that served as the base for the sampling portion of the assessment shall be closed to all additional assessments and refunds.

(2) Refund applications based on sampling techniques shall not be allowed.

(g) Erroneous refunds. If the department erroneously refunds or credits any sales or compensating tax to a retailer or consumer, a notice of tax assessment for the erroneous refund or credit may be issued by the department in either of the following periods:

(1) Within three years from the date the refund was made; or

(2) if it appears that any part of the refund was

induced by fraud or the misrepresentation of a material fact, within two years from the date of discovery of the fraud or misrepresentation.

The amount of the assessment shall be limited to the amount of the erroneous refund including interest, unless fraud is involved. (Authorized by K.S.A. 2004 Supp. 75-5155 and K.S.A. 2004 Supp. 79-3618; implementing K.S.A. 2004 Supp. 79-3233j, K.S.A. 2004 Supp. 79-3607, K.S.A. 2004 Supp. 79-3609, and K.S.A. 2004 Supp. 79-3650; effective May 27, 2005.)

92-19-50. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988; revoked Dec. 13, 2002.)

92-19-51. Gratuities, service charges and minimum charges.

(a) Each cover charge or minimum charge entitling the customer to receive entertainment, recreation, amusement, or food, meals or drinks furnished by any place where food, meals or drinks are regularly sold to the public, whether listed separately on a bill or collected as an admission fee or fixed charge shall be subject to sales tax.

(b) Each retailer shall include in the total selling price of the food, meals or drinks subject to sales tax, any amounts designated as a service charge which are added to the price of food, meals or drinks, even if the charges are made in lieu of tips and are paid over by the retailer in whole or in part to the retailer's employees.

(c) Cash gratuities or gratuities added by the consumer to a bill which are turned over in full to the employee, and gratuities given directly to an employee by a consumer and not pursuant to an arrangement made with the retailer shall not be subject to sales tax.

(d) Each retailer shall include in the total selling price of the food, meals or drink subject to sales tax, any gratuities which are mandatory in order for a consumer to receive food, meals, drinks or service, even though a portion or all of the mandatory gratuities collected may be paid over by the retailer to the retailer's employees.

(e) Each retailer shall include in the total selling price of food, meals or drinks subject to sales tax, any gratuities which are required by the retailer to be turned over either in whole or in part by the employees and which are credited by the retailer as a part of the minimum wage of the employees pursuant to federal or state laws, even though a portion or all of the gratuities collected may be paid over by the retailer to the retailer's

employees. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988.)

92-19-52. Agency relationships; direct purchases. (a) Unless specifically authorized by the sales tax act, an agency relationship between a purchaser and its principal shall not be recognized by the department of revenue for sales tax exemption purposes.

(b) To qualify as a direct purchase under K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1 and amendments, any bill, invoice, contract or other evidence of the transaction shall be made out in the name of the entity which qualifies for an exemption under the act, and the payment shall be made on that entity's check, warrant or voucher.

(c) Each sale of tangible personal property or taxable service made to and paid for by an agent, employee or other representative shall be taxable, even though the same purchase would have been exempt from sales tax had the principal or employer directly purchased the tangible personal property or service. Any contractual arrangement or understanding between an agent, employee or other representative and a principal or employer shall not be recognized by the department. Each retailer shall charge and collect the sales tax on the total selling price of tangible personal property or service even though the agent, employee, or other representative:

(1) Is on official business on behalf of the principal or employer;

(2) is on a per diem from the principal or employer;

(3) is on an expense account or will otherwise be reimbursed by the principal or employer; or

(4) has or will receive monies, credits or other assets from the principal or employer to pay for the transaction. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

92-19-53. Consumed in production. (a) In order for purchases of tangible personal property to qualify for exemption under K.S.A. 1986 Supp. 79-3606(n) as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1 and amendments, the following requirements must be met:

(1) The tangible personal property must be essential or necessary to the process;

(2) the tangible personal property must be used in the actual process;

(3) the tangible personal property must be immediately consumed or dissipated in the process;

(4) the tangible personal property must be used in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the providing of services or the irrigation of crops for ultimate sale at retail in the regular course of business; and

(5) the tangible personal property cannot be reusable for such purposes. The identity of the buyer, seller or item purchased is immaterial. Whether the purchase qualifies for exemption is determined by how the item is used in the production or processing activity. An item may be taxable for one use and exempt for another use, even though purchased by the same consumer. Each transaction shall be separately measured against the statutes and regulations to determine the taxability of the transaction.

(b) For the purposes of determining whether tangible personal property is consumed in the providing of services, the term "service" refers only to taxable services enumerated under the sales tax act. Each person providing a nontaxable service shall pay sales tax on all articles of tangible personal property and all services purchased by the person to provide the nontaxable service, and may not claim an exemption from sales tax.

(c) "Used in the actual process" means the use of the tangible personal property used shall:

(1) Be integral and essential to the production or processing activity;

(2) occur at the location where the production or processing activity is carried on; and

(3) occur during the production activity.

The fact that a particular item of tangible personal property may be considered important to a production process does not, of itself, mean that the tangible personal property is used in the actual process. The following uses of tangible personal property do not qualify for exemption from sales tax as consumed in production: shipping, testing, repairing, servicing, maintaining, cleaning the equipment and the physical plant, and storing. Tangible personal property used in the administration of the business and wholesale, commercial or retail facilities or buildings do not qualify for exemption from sales tax as consumed in production.

(d) “Immediately consumed or dissipated” means that tangible personal property shall be consumed or destroyed both economically and physically in a time reasonably requisite in the production or processing activity. The fact that tangible personal property may be used for only one production or processing activity and then discarded, or that tangible personal property is rendered obsolete or worthless in a short time is not the determining factor. Purchases of tangible personal property used in a repetitive function to produce articles of tangible personal property designed to be sold to consumers and not immediately consumed or dissipated are subject to sales tax. Tangible personal property that is specifically produced to perform a specific job for a specific consumer and has no other value other than as scrap, may qualify for exemption from sales tax as consumed in production, if the purchased property meets the other requirements under the exemption. Tangible personal property which breaks, depreciates, wears out or becomes obsolete, albeit in a short time span, does not qualify for exemption from sales tax as consumed in production.

(e) Natural gas, electricity, heat and water consumed by machinery and equipment actually used to produce, manufacture, process, mine, drill, refine or compound tangible personal property, provide taxable services or irrigate crops for resale in the regular course of business, qualify for exemption as consumed in production.

(f) All purchases of tangible personal property by contractors, subcontractors, or repairmen for incorporation into any structure or for use in altering, servicing, repairing or maintaining personal property or personal property that has been affixed to real property are subject to sales tax unless specifically exempted by K.S.A. 1986 Supp. 79-3606(d), (e) as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1.

Contractors, subcontractors, repairmen, and consumers shall not purchase materials exempt from sales tax as consumed in the production of services whether or not the project is original construction. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec 108, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

92-19-54. Ingredient or component

part. (a) For purchases of tangible personal property to qualify for exemption under K.S.A. 1986 Supp. 79-3606(m) as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1 and amendments, the following requirements must be met:

(1) The tangible personal property shall be essential or necessary to the tangible personal property or service produced, manufactured or compounded;

(2) the tangible personal property shall be actually used in or on the tangible personal property or service produced, manufactured or compounded;

(3) the tangible personal property shall become an integral and material part of the tangible personal property or service produced, manufactured or compounded; and

(4) the tangible personal property must become an ingredient or compound part of tangible personal property or service for ultimate sale at retail.

The identity of the buyer, seller or the item is immaterial. Whether the purchase qualifies for exemption shall be determined by how the item is used in the production or processing activity. An item may be taxable for one use and exempt for another use, even though purchased by the same consumer. Each transaction shall be separately measured against the statutes and regulations to determine the taxability of the transaction.

(b) For the purpose of determining whether tangible personal property is an ingredient or component part of a service, the term “service” refers only to taxable services enumerated under the sales tax act. Each person providing a nontaxable service shall pay sales tax on all articles of tangible personal property and services purchased to provide the nontaxable service, and may not claim an exemption from sales tax.

(c) “Integral and material” means:

(1) The physical incorporation of two or more parts or elements by chemical or mechanical process in a manufacturing, production or compounding process, the result of which renders a third item or product separate and distinct from the constituent parts or elements; or

(2) an attachment or part that is so necessary and essential to the final product that, if omitted, would render the final product valueless for its intended purpose.

Except as provided in paragraph (d), tangible

personal property that is important to the production process but does not become an integral and material or physical part of the tangible personal property for sale at retail is not exempt from sales tax.

(d) Each container, wrapper or other shipping or handling material actually accompanying the product sold is not subject to sales tax.

(e) Each retailer purchasing a container or other shipping or handling material for consumption which is not for resale as described in paragraph (d) is subject to sales tax. Each purchase by a retailer of a container or other shipping or handling material in which title remains with the retailer when the tangible personal property contained therein is sold by the retailer, or where the container or other shipping or handling materials are to be returned to the retailer by the consumer of the tangible personal property, is subject to sales tax.

(f) Each purchase of a container, wrapper or other shipping or handling material by a retailer using the container, wrapper or other handling material to provide nontaxable services is deemed to be consumed by the service provider and is subject to tax. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

92-19-55. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1, effective May 1, 1988; revoked Aug. 23, 2002.)

92-19-55a. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 2001 Supp. 79-3602, K.S.A. 2001 Supp. 79-3603 as amended by L. 2002, ch. 89, sec. 1 and by L. 2002, ch. 185, sec. 6, K.S.A. 79-3604, K.S.A. 2001 Supp. 79-3606; effective Aug. 23, 2002; revoked April 13, 2007.)

92-19-56. Coins, bullion, stamps, antiques, collectables, commemoratives, and similar items. (a) Each sale of coins, bullion, stamps, antiques, collectables, commemoratives and other similar items is subject to sales tax even though purchased as an investment. It is imma-

terial that a gain, benefit or other advantage may not be realized until the resale of the item.

(b) Each exchange of currency or coin for other currency or coin at face value is not a transfer subject to sales tax. Each exchange of currency or coin at the current exchange rate is not a transfer subject to sales tax. However, when currency or coin, although acceptable as legal tender, is purchased at rates not reflecting face value as currency or coin, or when the precious metal content of a coin determines its true value, the purchase is subject to sales tax.

(c) The seller's principal line of business is immaterial when determining the taxability of transactions under this section. Each bank, savings and loan or other thrift institution, pawn shop, coin shop, collector, dealer or other person is a retailer under the sales tax act when selling coins, bullion, stamps, antiques, collectables, commemoratives and other similar items at retail to the final user or consumer. Each retailer shall collect sales tax on the total gross receipts received from the sale of coins, bullion, stamps, antiques, collectables, commemoratives and other similar items.

(d) Each sale of a commodity contract for gold, silver and other similar items is not subject to sales tax. However, each sale of bullion and other similar property which is physically transferred in Kansas to the consumer or the consumer's agent or employee is subject to sales tax.

(e) Each person purporting to hold coins, bullion, stamps, collectables, commemoratives and other similar items for resale in the regular course of business shall prove that the person actively engages in the business as a seller of such items. Relevant evidence that a person is a retailer of these items may include:

(1) the number, scope and character of the person's purchases and sales;

(2) evidence of the person's continuing efforts to advertise and sell such items;

(3) evidence that the person holds themselves out to the public as a retailer of such items at an identified place of business;

(4) the manner in which income from transactions in such items is reported by that person for federal and state income tax purposes; and

(5) whether a local business license has been issued to that person to engage in retail sales of such items. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988.)

92-19-57. Sales tax on motor fuels, special fuels, liquefied petroleum, and other fuels.

(a) Each sale of motor fuel, special fuel, liquefied petroleum, and any other similar fuel that is subject to a Kansas fuel excise tax shall be exempt from sales tax if a Kansas fuel excise tax has been imposed and the fuel excise tax is not refundable. However, each sale of these fuels shall be subject to sales tax if no Kansas fuel excise tax has been imposed, unless the sale is specifically exempt under the sales tax act.

(b) Except as provided in subsection (a), each sale of motor fuel, special fuel, liquefied petroleum, and any other similar fuel for use in cooling, refrigerating, or heating for nonresidential or non-agricultural purposes shall be subject to sales tax. Fuel used to power refrigeration units on trucks and trailers, other than fuel used in such units by interstate common carriers, shall be subject to sales tax.

(c) Except as provided in subsection (a), each sale of motor fuel, special fuel, liquefied petroleum, and any other similar fuel for use in aircraft, other than purchases of these fuels by passenger airlines and other interstate common carriers, shall be subject to sales tax. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 2001 Supp. 79-3602, 79-3606; effective May 1, 1988; amended Dec. 13, 2002.)

92-19-58. Revenue rulings.

(a) A revenue ruling is a statement of the department of revenue issued to the general public, and is of general application. A revenue ruling interprets the statute and regulation to which the ruling relates and is ordinarily issued in response to newly enacted legislation, recent court decisions and areas of sales tax interpretation and application which affect a large number of taxpayers.

(b) A revenue ruling is general in nature, and is not issued to address a specified set of facts. A revenue ruling shall be measured against each transaction separately and the facts of each transaction shall determine the sales tax consequences to which the ruling applies.

(c) A revenue ruling shall cease to be valid when any one or all of the following occur:

(1) The statute or regulation to which the ruling applies is changed in any pertinent part by the Kansas Legislature;

(2) a pertinent change in the interpretation of the statute or regulation is made by a court decision;

(3) the regulation or interpretation is changed in any pertinent part by a department regulation or revenue ruling, whether the change is accomplished by means of a new regulation or revenue ruling or by means of a revision of an existing regulation or revenue ruling; or,

(4) the department rescinds an outstanding ruling issued prior to any given specified date by issuing a general bulletin or notice in the Kansas register. (Authorized by and implementing K.S.A. 79-3618; effective May 1, 1988.)

92-19-59. Private letter rulings.

(a) A private letter ruling is a statement of the director of taxation or the director's authorized agent issued to an individual taxpayer and is of limited application. A private letter ruling interprets the statute and regulation to which the ruling relates. A private letter ruling is ordinarily issued in response to a request for clarification of the tax statute and regulation relating to a specified set of circumstances affecting the payment of, accounting for, or exemption from sales tax.

(b) A taxpayer may not rely upon a verbal opinion from the department of revenue. Only a written private letter ruling shall bind the department. Each taxpayer desiring a private letter ruling from the department shall request a ruling from the department in writing. The request shall state with specificity the circumstances and facts relating to the issue for which the ruling is sought. If insufficient facts are presented with a taxpayer's request for a ruling, a private letter ruling shall not be issued by the department.

(c) A private letter ruling is not for general publication and shall not be relied upon or cited as precedent by any person other than the person to whom the ruling is issued.

(d) Each private letter ruling shall cease to be valid when any one of the following occur:

(1) The statute or regulation to which the ruling applies is changed in any pertinent part by the Kansas legislature;

(2) a pertinent change in the interpretation of the statute or regulation is made by a court decision;

(3) the regulation or interpretation is changed in any pertinent part by a department regulation or revenue ruling, whether the change is accomplished by means of a new regulation or revenue ruling or by means of a revision of an existing regulation or revenue ruling; or

(4) the department rescinds an outstanding

opinion issued prior to any given specified date by issuing a general bulletin or notice in the Kansas register. (Authorized by and implementing K.S.A. 79-3618; effective May 1, 1988.)

92-19-60. Reserved.

92-19-61. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, K.S.A. 79-3604; effective May 1, 1988; revoked Aug. 23, 2002.)

92-19-61a. Retailers' responsibility to collect sales tax; presumption of taxability. (a) Each retailer shall collect the tax imposed by the act from the retailer's customers. Each retailer who fails or refuses to collect tax that is lawfully due shall be liable for payment of the uncollected tax.

(b) A retailer shall not advertise, hold out, or otherwise state to the public or to any customer either of the following:

(1) The tax will be assumed, absorbed, or paid by the retailer for the customer.

(2) The tax will not be charged, or if the tax is charged and collected, the tax will be refunded.

These two requirements shall not prevent a retailer from billing tax as part of a tax-included charge, if proper notice is given to the customer or public as specified in subsection (d).

(c) Each retail sale shall be presumed to be taxable. If the director establishes that a transaction was a retail sale to a final user or consumer, the retailer shall have the burden to show that the tax was collected from the customer and remitted to the state or that an exemption certificate was secured from the customer that covers the transaction.

(d)(1) Whenever practical, each retailer shall add the tax as a separate line item to the selling price when billing the customers. The initial invoice, bill, charge ticket, sales slip, or other billing memorandum shall separately state the amount of the tax being charged or contain a written statement that tax is included in the price. If the initial billing memorandum fails to reflect tax as a separate line item or to state that tax is included in the price, it shall be presumed that tax was not charged to the customer or collected.

(2) Each retailer who makes large numbers of cash sales and desires to fix a sum for the selling price and applicable tax, including sporting event concessionaires, may charge customers a tax-in-

cluded amount. The tax collected as part of a tax-included price shall be factored from the total receipts to arrive at the amount of gross receipts to report to the department.

(3) Each retailer who makes tax-included sales in which tax is an unspecified part of the customer charge shall conspicuously post a sign or notice that the customer charges are "sales tax included." Menus and any billing memorandum given to customers shall also include the statement "sales tax included" or indicate that the price being charged is a tax-included amount.

(4) "Factoring" shall mean the method used to determine the amount of the tax due when the tax has been collected as an unspecified part of the customer charge, including tax-included sales and sales made through vending machines and other coin-operated machines. To calculate gross receipts from a tax-included amount, the total amount of the tax-included receipts shall be divided by one plus the sum of state and local sale tax rates, stated as a decimal. The result of this calculation shall be the gross receipts that are reported on tax returns as the amount that is subject to state and local sales tax.

(e) Taxes collected by retailers shall be deemed to be held in trust until paid to the department. In addition, all funds paid by a customer to a retailer as taxes that exceed the taxes that are actually due shall be refunded to the consumer or, if the funds cannot be refunded, treated as public money that is held in trust for and payable to the state of Kansas.

(f) When billing the Kansas sales tax or use tax, an out-of-state retailer shall identify the tax being charged as Kansas tax, and not the tax of another state. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 79-3604, 79-3605; effective Aug. 23, 2002.)

92-19-62. Warranties, service and maintenance contracts. (a) Each warranty included in the selling price of tangible personal property which is not charged to the consumer separately from the tangible personal property is subject to sales tax.

(b) Each charge made by a retailer separate and apart from the selling price of the tangible personal property for an optional warranty, extended warranty, service contract, maintenance contract and other similar instruments is subject to sales tax. Each retailer shall collect sales tax on the total charge to the consumer for the contract.

(c) Each service rendered by a retailer, including supplying parts and services, without charge to the consumer under a warranty, maintenance or service contract is not subject to sales tax on the amount of the reimbursement received from the warrantor, whether reimbursement is in the form of money, credit or the replacement of parts used to perform the repair work. However, any charge such as a deductible or similar charge which the consumer is obligated to pay under the warranty, maintenance or service contract is fully taxable, and each retailer shall collect sales tax on the total charge paid by the consumer.

(d) If a retailer does not perform repair services under a warranty, maintenance or service contract, but instead has a third party perform the repairs, the third party's gross receipts received from that retailer are not subject to sales tax. The third party shall secure an exemption certificate from the retailer which states:

(1) that the service performed by the third party was pursuant to a warranty, maintenance or service contract;

(2) that the retailer collected from the consumer sales tax on the total selling price of the warranty, maintenance or service contract; and

(3) the retailer's sales tax registration number.

If a retailer has collected a deductible or similar charge from the consumer, the retailer shall include the amount in the retailer's taxable gross receipts, even though a third party may actually perform the service under the warranty, maintenance or service contract.

(e) Each retailer gratuitously providing parts, services or both to a consumer, is deemed to be the consumer of any materials, parts and third party services used. In this instance, each retailer shall pay sales tax to any third party service provider, report the cost of materials and parts on the retailer's sales tax return, and pay the appropriate sales tax. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, effective May 1, 1988.)

92-19-63. Limitations. The tax imposed under the sales tax act shall be assessed within three years from the date the return is filed. However, if any person obligated to file a return for taxes imposed under the sales tax act fails to file a return for any reason, the tax may be assessed at any time. A levy or other proceeding to enforce the collection of the tax, penalty and interest may

also be commenced at any time. (Authorized by K.S.A. 79-3618, implementing K.S.A. 79-3609; effective May 1, 1988.)

92-19-64. (Authorized by 79-3618, implementing K.S.A. 79-3643; effective May 1, 1988; revoked July 27, 2001.)

92-19-64a. Responsible individuals. (a) Under K.S.A. 79-3643, and amendments thereto, a person may be held liable for sales taxes not paid to the state of Kansas if that person is a responsible individual, and has willfully failed to collect, account for, or pay over to the state the taxes that are due, or has otherwise acted to evade or defeat payment of these taxes.

(b) "Responsible individual" shall mean any person with sufficient status, duties, and authority to have significant control over business finances or the disbursement of business funds.

(c) Having one or more of the following factors that establish status, duties, and authority of a person shall be sufficient to establish that the person has significant control over business finances or the disbursement of business funds:

(1) A significant ownership interest in a business;

(2) a significant involvement in the day-to-day management of the business;

(3) the authority to sign business checks or tax returns;

(4) the authority to direct payment of business funds to creditors;

(5) the authority to pledge business assets as collateral for loans, advances, or lines of credit for the business;

(6) the authority to bind the business to contracts entered into as part of the day-to-day business operations; or

(7) the authority to hire or fire employees who are authorized to perform any act described in paragraphs (3) through (6) of this subsection.

(d) The term "willfully" in K.S.A. 79-3643, and amendments thereto, shall have the same meaning as when the term "willfully" is used in K.S.A. 79-32,107(e), and amendments thereto.

(e) Acts or omissions showing that a responsible individual acted willfully in failing to collect, account for, or remit taxes may include one or more of the following:

(1) Making a deliberate choice that the business should pay other creditors in spite of having knowledge that taxes collected are not being remitted to the state of Kansas;

(2) having knowledge of the tax delinquency and failing to exercise authority to rectify it if funds were available to pay the state of Kansas;

(3) performing a voluntary or intentional act or failing to perform such an act with knowledge that the act or omission will result in the failure of the business to collect, account for, or remit taxes owed to the state of Kansas;

(4) failing to investigate or to correct mismanagement after notice that taxes owed to the state of Kansas are not being remitted; or

(5) embezzling business funds.

(f) The liability of a responsible individual who acted willfully shall survive the dissolution of a corporation or other business. (Authorized by K.S.A. 2000 Supp. 79-3618; implementing K.S.A. 2000 Supp. 79-3643; effective July 27, 2001.)

92-19-65. Medical equipment and supplies. (a) "Medical supplies" means tangible personal property specifically designed for and exclusively used in the cure, treatment or diagnosis of an injury, illness or other malady of the human body, and consumed in a single usage. Medical supplies do not include tangible personal property designed or customarily used for human habitation purposes, or as a means for generally maintaining a quality of life not directly related to the cure, treatment or diagnosis of an injury, illness or other malady of the human body.

(b) "Medical equipment" means equipment specifically designed for and exclusively used in the cure, treatment or diagnosis of an injury, illness or other malady of the human body. Medical equipment does not include equipment designed or customarily used for human habitation purposes, or as a means for generally maintaining a quality of life not directly related to the cure, treatment or diagnosis of an injury, illness or other malady of the human body, even though the equipment may be used to assist in providing certain services. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 929, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

92-19-66. Contractors, subcontractors and repairmen; purchases of material. (a) Sales of building material or other property to contractors, subcontractors or repairmen for use by them in building, constructing, erecting, equipping, furnishing, repairing, servicing, altering, maintaining, enlarging, reconstructing or remodel-

ing shall be taxable. Material used by a contractor, subcontractor or repairman for a project under original construction shall be subject to sales tax. Each contractor, subcontractor or repairman is deemed to be the final user or consumer of material used by the contractor, subcontractor, and repairman in construction projects. Each contractor, subcontractor or repairman shall not give, and each retailer shall not accept, a resale exemption certificate to purchase material without sales tax.

(b) Each contractor, subcontractor or repairman shall be responsible for the payment of sales tax on all materials and supplies purchased for use by the contractor, subcontractor or repairman in erecting structures for others, or for building on, or otherwise improving, altering or repairing real or personal property of others.

(c) Each retailer whose principal line of business is the retail selling of tangible personal property to the final user or consumer, but who also performs contractor services, may purchase material exempt from sales tax for resale purposes. When the retailer engages in a construction project as a contractor and removes material from inventory to perform the project, the retailer shall report and pay the proper sales tax on the cost of the material on the retailer's sales tax return.

(d) The taxing event shall be deemed to occur at the time a contractor purchases material, or when a retailer who is also a contractor removes material from inventory to perform a construction project. Therefore, bulk purchases of all material by persons who are contractors only, and all material removed from inventory by a retailer to perform a construction project shall be subject to sales tax at the time of purchase or at the time the material is removed from inventory, even though the material may be used in a construction project outside of Kansas. No deduction, exclusion, refund or credit for sales tax shall be allowed when a contractor purchases material in Kansas, or when a retailer who is also a contractor removes material from inventory as a sale in interstate commerce, even though the material may be used in a construction project outside of Kansas. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988.)

92-19-66a. (Authorized by 79-3618; implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended

by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988; revoked June 26, 1998.)

92-19-66b. Labor services. (a) Each contractor, subcontractor, and repairman shall be responsible for collecting and remitting sales tax on taxable services performed for others, including taxable services performed for other contractors. A contractor, subcontractor, or repairman shall not issue or accept a resale exemption certificate that claims an exemption from sales tax for services being purchased from or sold to another contractor, subcontractor, or repairman.

(b) The taxable base for all contracts involving the application or installation of tangible personal property shall be the difference between the contract price and the cost of material, supplies, and payments to subcontractors, including sales or compensating tax paid by the contractor on the materials, supplies, and subcontractor charges purchased by the contractor to complete the contract.

(c) Each contractor, subcontractor, or repairman who does not separately state the amount of sales tax for services performed in that person's contract, bid estimates, customer billings, or other evidence of the transaction shall state in the document that all applicable sales taxes are included in the selling price. If the statement does not appear in the contract, bid estimate, billing, or other evidence of the transaction, it shall be presumed that the sales tax was not charged to the consumer. Each retailer shall carry the burden of proving that the sales tax was charged to the consumer and properly remitted to the state.

(d) The service of installing or applying tangible personal property in connection with the original construction, which is the first or initial construction of a new building or facility, shall not be subject to sales tax. The erection of a building or facility on a site previously occupied by a building or facility that has been demolished, razed, or dismantled shall be considered to be original construction if the building or facility is totally new, whether or not the old foundation was also demolished.

(e) The service of installing or applying tangible personal property for the addition of an entire room or floor to the exterior of an existing building or facility shall not be subject to sales tax. Any replacement, remodeling, restoration, repair, renovation, or reconstruction done in the interior of an existing building or facility necessary to the construction of

an entire room or floor added to the exterior of an existing building or facility shall be considered to be original construction and not subject to sales tax when any of these conditions is met.

(1) Except for the addition of the entire room or floor to the exterior of the building or facility, the work performed inside the existing building or facility would not be necessary.

(2) The work being done in the existing building or facility is necessary to support the addition of the new room or floor being added to the exterior of the building, facility, or the machinery contained therein.

(3) The support to the entire room or floor being added to the exterior of the existing building or facility is the direct causal factor of the construction being performed to the interior of the existing building or facility.

If none of the three requirements can be met, the services performed to the interior of the existing building or facility shall be subject to sales tax, and the cost of services rendered in connection with the entire project shall be allocated between the addition of the new room or floor and the services performed to the interior of the existing building or facility. Sales tax shall be collected and remitted for that portion of services allocated to those services performed to the interior of the existing building or facility.

(f) Services of installing or applying tangible personal property to complete unfinished portions of newly constructed buildings, facilities, shopping centers, and malls when space within the building, facility, center, or mall is leased or sold to the first or initial tenant of that space shall not be subject to sales tax. Services performed to install or apply tangible personal property for the completion of an unfinished portion of an existing building or facility shall be presumed not to be taxable when all of the following conditions are met.

(1) The service being rendered was called for in the original blueprint, building plan, or building specification at the time original construction of the building or facility was started, including any change orders issued during the original construction of the building or facility.

(2) The completion of the unfinished portion of the building or facility is within a time that is reasonably close to the time of the original construction of the building or facility.

(3) The service rendered would have been performed at the time of the original construction of

the building or facility, except for circumstances beyond the owner's control. Those circumstances shall not include instances in which the project is essentially completed and usable for the purposes intended, but the owner merely fell short of funds, or when the owner, after taking possession or occupancy of the building or facility, contracts for additional services.

(4) The owner or occupant is the first or initial owner or occupant of the building or facility.

(g) Sales tax shall not be imposed on the service of installing or applying tangible personal property for the purpose of restoring, reconstructing, or replacing a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion, or earthquake. This exemption shall not apply to restoration, reconstruction, or replacement of a building or facility due to normal deterioration resulting from the continuous exposure to the elements, or the obsolescence of the building or facility. Each retailer performing a service under this exemption shall secure an affidavit from the owner of the building or facility stating that the building or facility was damaged or destroyed by one or more of the above-mentioned causes. Each retailer shall retain the affidavit in the retailer's records for three years. The affidavit shall be in substantially the following form:

State of Kansas, County of _____
 ss. _____
 of lawful age, being first duly sworn, deposes, and states: _____

Subscribed in my presence and duly sworn to before me, this _____ day of _____, 19____.

(Signature of Notary Public)

(h) Services performed to dismantle, demolish, raze, or destroy a building or facility or a portion of a building or facility shall be subject to sales tax. If the services are performed in connection with the original construction of a building or facility, and the building or facility is constructed on the same site, the service of dismantling, demolishing, razing, or destroying the original building or facility shall not be subject to sales tax. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3603; effective May 1, 1988; amended June 26, 1998.)

92-19-66c. Purchase and lease of tools and equipment. (a) Each contractor, subcontractor and repairman shall be considered the final user or consumer of all tools, equipment and machinery purchased to perform construction serv-

ices. Sales of tools, equipment and machinery to contractors, subcontractors and repairmen to perform construction services shall be subject to sales tax. With the exception of leases of equipment and machinery by a contractor under a project exemption certificate, leases of tools, machinery and equipment by a contractor to perform construction services shall be subject to sales tax.

(b) Leases of tools, equipment and machinery by a contractor are not exempt from sales tax as an ingredient or component part of the services performed by the contractor, whether the services are taxable or exempt from the sales tax.

(c) Leases of tools, equipment and machinery by a contractor are not exempt from sales tax as consumed in the production of the service performed by the contractor, whether the services are taxable or exempt from the sales tax. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988.)

92-19-66d. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988; revoked June 26, 1998.)

92-19-66e. Project exemptions. (a) "Project exemption" means a type of sales tax exemption that allows a qualifying entity to pass its exempt status through a contractor to supplier when the contractor purchases materials for use in improving the entity's real property. K.S.A. 79-3606(d), K.S.A. 79-3606(e), and K.S.A. 79-3606(cc), and amendments thereto, identify the entities that may qualify for a project exemption.

(b) Project exemptions shall be limited to exempting purchases by contractors for construction projects performed for qualifying entities that have secured a project exemption certificate. Project exemption certificates shall be considered to provide a specific, limited exemption that contractors may claim for a single construction project of limited duration and shall not create an express or implied agency relationship between the exempt entity, the contractor, or the supplier. For purposes of this regulation, "contractor" means the general contractor, subcontractors, and repairment, unless the context clearly indicates otherwise. "Supplier" means retail vendors of construction materials and other building supplies.

(c) Project exemption certificates may be is-

sued by the department of revenue or by an entity that has been designated by the secretary of revenue as an agent of the department for purposes of issuing the certificates. Only entities that are entitled to be granted a project exemption under K.S.A. 79-3606(d) or K.S.A. 79-3606(e), and amendments thereto, may be designated as an agent of the department for this purpose. Businesses that qualify for project exemption because of economic development laws shall not be granted agency status. For purposes of this regulation, “the secretary of revenue” or the “secretary” means the secretary of revenue or that individual’s designee.

(d) Entities that have not been designated as agents of the department shall apply to the department for a project exemption certificate for each construction project. Upon approval of the application, a project exemption certificate shall be issued by the department directly to the entity making application.

(e) Each application to the department for a project exemption certificate shall provide the following information:

- (1) The exempt entity’s name and address;
- (2) the general contractor’s name and address;
- (3) the project location, description, and the job number being assigned to the project by the entity;
- (4) the starting date for construction;
- (5) the estimated completion date of the project; and

(6) any additional information required on forms approved by the department for use in applying for project exemption.

(f) Requests by an entity for agency status to issue its own project exemption certificates shall be made on forms issued by the department. Each entity’s request for agency status shall be approved or denied in writing by the secretary of revenue.

(g) Each entity that is authorized to issue its own project exemption certificates shall meet these requirements:

- (1) Use certificate forms that have been approved by the department;
- (2) issue certificates in a numbered sequence;
- (3) record each project exemption certificate number when the certificate is issued;
- (4) maintain records that contain the information required in subsection (e);
- (5) maintain records in a form that is acceptable to the department; and

(6) establish procedures for releasing the information in its records to department auditors.

(h) All records that concern an entity’s issuance of project exemption certificates shall be made available to the department for inspection during normal business hours. Entities that receive authorization to issue their own project exemption certificates may be required to file quarterly reports with the department. Forms for certifying the contents of its records on project exemptions for purposes of the hearsay exception requirements of K.S.A. 60-460(m), K.S.A. 60-460(n), and K.S.A. 60-460(o), and amendments thereto, shall be made available to authorized entities by the department upon request. An entity’s authorization to issue project exemption certificates may be revoked if the entity fails to maintain proper records, issues certificates for projects that do not qualify for exemption, refuses to make information available to the department, has backdated a project exemption certificate, or for other good cause.

(i) An entity that is authorized to issue its own project exemption certificates may issue certificates only for wholly owned projects. It shall not issue certificates for joint projects that involve separate entities, including joint projects between a municipality and a school, educational institution, other governmental unit, or a nonprofit corporation. When a project involves two or more entities, the entities shall file a joint application for project exemption with the department.

(j) An entity that issues a project exemption certificate for a project that does not qualify for exemption shall be liable for all taxes that would have otherwise been paid on the project by contractors who worked on the project, together with interest and penalty. Assessments may be issued based on projections of tax liability from material cost records and other records.

(k) When an exempt entity buys construction materials that are billed to and paid for by the exempt entity, the purchases shall be exempt without a project exemption certificate. Only indirect purchases made by an entity’s contractor shall require a project exemption certificate for exemption. Project exemption certificates shall not be issued for direct purchases or for projects that do not involve improvements to real property.

(l) Each exempt entity shall maintain the original project exemption certificate as part of its records and provide photostatic copies to the project’s general contractor for distribution to

subcontractors, repairmen and suppliers. Each subcontractor, repairman, or supplier who is presented with a project exemption certificate or who uses one to exempt purchases shall maintain a copy of the certificate as part of its records. Each supplier shall inscribe the project exemption number on invoices or other billing documents issued to contractors, subcontractors, or repairmen who claim exemption under a certificate. Suppliers may honor a project exemption certificate only when the sales being exempted are consistent with the dates and other information contained in the certificate.

(m) Project exemption certificates shall be considered to operate prospectively. Each certificate shall be issued for a specific project of limited duration and shall contain an expiration date. If an entity qualifies for a project exemption but fails to secure or issue a certificate before purchases for the project are made, contractors shall pay tax on their purchases. An exempt entity that fails to secure or issue a project exemption certificate in time for a contractor to secure exemption from its suppliers shall seek a refund from the department in accordance with subsection (n) and shall not backdate the certificate or refuse to pay the tax to the contractor.

(n)(1) Any exempt entity that fails to secure a project exemption certificate in time for a contractor to secure exemption for part or all of its purchases may apply to the department for permission to seek from its contractors' suppliers a refund of taxes on sales that would have been exempt had a project exemption certificate been secured in time for its contractors to claim exemption on their purchases. The refund request shall be accompanied by the following documents or shall show the following:

(A) Proof that the project qualified for project exemption; and

(B) affidavits from the contractor, subcontractors, and repairmen verifying the amount of taxes they paid to suppliers on purchases for the project. The affidavit shall be supported by a schedule listing the taxes paid by the contractor, subcontractor, and repairmen; the supplier to whom the taxes were paid; and the date of the sale. Copies of invoices and other documentation that verifies the tax payments listed in the schedule shall accompany the affidavit and schedule. The affidavit shall include a waiver by all contractors, subcontractors, and repairmen that relinquish all claims to the refund.

(2) Each application shall be reviewed by the department. If the department determines that the sales to a contractor, subcontractor, or repairman would have been exempt had a project exemption certificate been obtained before purchases were made, the entity shall be provided with written authorization for the entity to seek a refund from the suppliers for the scheduled taxes paid by the contractors, subcontractors, and repairmen. To secure the refund, the entities shall submit the refund authorization to the supplier under the provisions of K.A.R. 92-19-49a.

(o) Each contractor who makes exempt purchases under a project exemption certificate shall maintain adequate records to show disposition of the materials, supplies, and services that were purchased exempt. Upon completion of an exempt project, each contractor shall furnish a sworn statement to the exempt entity indicating that all purchases made exempt under the project exemption certificate were entitled to exemption under the act. Forms for these affidavits shall be furnished by the department.

(p) A project exemption certificate shall not relieve a contractor from liability for taxes on materials and supplies that are not incorporated or consumed on an exempt project. Any material purchased under a project exemption certificate that has not been consumed or incorporated into the project or that has not been returned to the supplier for credit shall be subject to sales tax. Each contractor shall file a return and remit tax on the material directly to the department. This return shall be filed for the reporting period that follows the month in which the contractor determines that the materials or supplies were not used in the exempt project. (Authorized by and implementing K.S.A. 79-3606, 79-3618; effective June 26, 1998.)

92-19-67. Sales by corporations, businesses, organizations and associations organized not-for-profit. (a) Each not-for-profit corporation, business, organization or association regularly engaged in the business of selling tangible personal property at retail or furnishing services or entertainment to the ultimate user or consumer, and not for resale, shall be a retailer as defined in K.S.A. 1986 Supp. 79-3602(d). Each retailer shall collect and remit sales tax on the total gross receipts received from all taxable retail sales of tangible personal property, services or entertainment.

(b) The principal line of business, activity, intention or function of the corporation, business, organization or association is not determinative of whether a person is a retailer. The ultimate use of funds is not determinative of whether the gross receipts received from retail sales of tangible personal property or services are subject to sales tax.

(c) "Regularly engaged in the business" means the periodic, habitual or recurring sale of tangible personal property or a taxable service at retail. A person is a retailer under the act if the person sells tangible personal property at retail or provides a taxable service in the normal course of its business operations, notwithstanding the fact that the sales may be few or infrequent, or that retail sales may comprise a small portion of the total gross income. When a person acquires tangible personal property for the purpose of resale, the person is a retailer and shall collect sales tax on the retail sale of the property, regardless of whether the person's principal line of business, function or intention involves retail sales of tangible personal property.

(d) Non-recurring retail sales of tangible personal property or taxable services by a religious organization are not subject to sales tax, whether or not any property sold was acquired for resale purposes. "Nonrecurring" means there must not be more than one sale of tangible personal property or taxable services within a twelve month period. "Religious organization" means a structured, nonprofit, collective association or society of individuals relating to or manifesting devotion to an acknowledged ultimate deity. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988.)

92-19-68. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 3602; effective May 1, 1988; revoked June 26, 1998.)

92-19-69. Caterers. (a) Each person engaged in the business of catering is a retailer as defined in K.S.A. 1986 Supp. 79-3602(d). Each retailer shall collect sales tax on the total gross receipts received from the sale of food, meals and drinks, other than alcoholic liquor as defined in K.S.A. 41-102 as amended by L. 1987, Ch. 182, Sec. 1 and amendments, and cereal malt beverages as defined in K.S.A. 41-2701 as amended by L. 1987, Ch. 182, Sec. 97, and amendments, unless specifically exempt. Sales tax shall be imposed on the total selling price of the transaction without any deduction or exclusion for labor or services

expended, skill, time spent, overhead and other expenses incurred by the caterer in producing the tangible personal property or profit thereon, 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.

(b) Each amount designated as a service charge added to the price of food, meals or drinks, shall be a part of the selling price of the food, meals or drinks, and shall be included in the total selling price subject to sales tax, even though such charges are made in lieu of tips and are paid over by the retailer in whole or in part to the retailer's employees.

(c) The gross receipts received by a person holding a temporary permit as defined in K.S.A. 41-2601 as amended by L. 1987, Ch. 182, Sec. 60, from each sale of alcoholic liquor as defined in K.S.A. 41-102 as amended by L. 1987, Ch. 182, Sec. 1 and amendments, and cereal malt beverages as defined in K.S.A. 41-2701 as amended by L. 1987, Ch. 182, Sec. 97 and amendments, upon which no Kansas excise tax has been paid, shall be subject to sales tax. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

92-19-70. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 3603 as amended by L. 1987, Ch. 182, Sec. 108, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1, effective May 1, 1988; revoked June 20, 2008.)

92-19-71. Mobile phone, cellular phone, beeper and similar services. (a) Sales tax shall be imposed on the gross receipts received from cable, community antennae, subscriber radio and television services. A mobile phone, cellular phone, beeper or other similar services is deemed to be a subscriber radio service. The gross receipts received from mobile phone, cellular phone, beeper and other similar services are subject to sales tax.

(b) Sales tax shall be imposed on the total cost to the consumer without any deduction or exclusion for:

- (1) The cost of the property or service sold;
- (2) services used or expended;
- (3) materials used;

(4) losses, overhead or any other cost of expense; or

(5) profit, 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.

(c) Sales tax applies to all amounts paid for a mobile phone, cellular phone, beeper or other similar service, regardless of whether there is actual consumption of the service.

(d) Each charge for the use of equipment and facilities furnished in connection with, supplemental to or as an aid in the usage of a mobile phone, cellular phone, beeper or other similar tangible personal property shall be taxable.

(e) Each retailer shall collect sales tax on subscriber radio services which are resold to their customers. Each retailer furnishing a mobile phone, cellular phone or other similar service may purchase the service from the retailer's vendor exempt from sales tax for resale purposes by furnishing the vendor a Kansas resale exemption certificate.

(f) Each retail sale involving the use or furnishing of a mobile phone, cellular phone, beeper or other similar service shall be considered to have been consummated at the billing address of the subscriber as it appears in the retailer's records. Each retail lease of telecommunication and data processing equipment used on connection with a mobile phone, cellular phone, beeper or other similar service shall be considered to have been consummated at the billing address of the lessee as it appears in the retailer's records. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988.)

92-19-72. Retail sales between related entities. (a) Each interdepartmental transfer of tangible personal property and taxable services between various departments of a single legal entity shall not constitute a sale subject to sales tax.

(b) Each transfer of tangible personal property and taxable services between separate legal entities for use or consumption, and not for resale, shall be taxable, even though the entities:

- (1) Share common principals or ownership and operations;
- (2) share the same business location;
- (3) file consolidated income tax returns for federal and state income purposes; or

(4) do not enjoy a profit or expense as a result of the transaction.

When a transaction would be subject to sales tax if the transaction were between two separately owned and operated entities, the commonality of the two entities is irrelevant, and sales tax is imposed on the transaction between the two related entities.

(c) "Separate legal entities" shall mean entities which are recognized as individual entities either in fact or at law. Each transfer of tangible personal property and taxable services between separate legal entities for use or consumption, and not for resale, shall include:

- (1) Transfers between individuals and partnerships;
- (2) transfers between individuals and corporations;
- (3) transfers between individuals and unincorporated associations;
- (4) transfers between partnerships and corporations;
- (5) transfers between partnerships and unincorporated associations;
- (6) transfers between partnerships;
- (7) transfers between unincorporated associations and corporations; and
- (8) transfers between corporations, whether between sister corporations or parent and subsidiary corporations. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988.)

92-19-73. Membership fees and dues.

(a) Each public or private club, organization, or business charging dues to members for the use of the facilities for recreation or entertainment shall collect sales tax on the gross receipts received from the dues, except for the following:

(1) Clubs and organizations that are exempt from property tax pursuant to the "eighth" paragraph of K.S.A. 79-201 and amendments thereto, including the American legion, the veterans of foreign wars, and certain other military veterans' organizations;

(2) clubs and organizations that are exempt from property tax pursuant to the "ninth" paragraph of K.S.A. 79-201 and amendments thereto, including the Y.M.C.A., Y.W.C.A., Boy Scouts, Girl Scouts, and certain other humanitarian community service organizations; and

(3) nonprofit organizations that support nonprofit zoos, if the organization is exempt pursuant

to section 501(c)(3) of the federal internal revenue code of 1986 and the dues are used to support the operation of the zoo.

(b)(1) "Dues" means any charge that is a debt owed to the club, organization, or business by an existing member or prospective member in order for the member or prospective member to enjoy the use of the facilities of the club, organization, or business for recreation or entertainment, and, except as provided in subsection (b)(2), shall include periodic or one-time special assessments, initiation fees, and entry fees.

(2) Dues shall not include a redeemable equity contribution required for membership, if the club or organization is obligated to repay the contribution, and the contribution is reflected as a liability on the club's or organization's books and records. Redeemable equity contribution shall include membership stock, certificates of membership, refundable deposits, refundable capital surcharges, and refundable special assessments.

(3) If all or part of a redeemable equity contribution paid to acquire or retain membership ceases to be carried as a liability on the books and records of a club that continues operation, or its successor, and the contribution has not been redeemed by a former member or former member's estate, the amount of the contribution that is no longer carried as a liability shall be subject to sales tax.

(c) "Recreation or entertainment" means any activity that provides a diversion, amusement, sport, or refreshment to the member and includes health, fitness, exercise, and athletic activities. (Authorized by K.S.A. 2000 Supp. 79-3618; implementing K.S.A. 2000 Supp. 79-3603 as amended by SB 1, Sec. 1 and as further amended by SB 322, Sec. 2; effective May 1, 1988; amended July 27, 2001.)

92-19-74. Accounting periods; monthly filing of returns. Each retailer whose total tax liability exceeds \$1600.00 in any one calendar year shall file a sales tax return on or before the twenty-fifth day of every calendar month, regardless of the accounting method employed by the retailer. Because all accounting periods end within a calendar month, a sales tax return shall be filed no later than the twenty-fifth day of the month following the month in which the accounting period ends. If there is a calendar month in which two accounting periods end, the tax return for that month shall include all retail sales made during

both of these accounting periods. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 3607; effective May 1, 1988.)

92-19-75. (Authorized by 79-3618; implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988; revoked July 27, 2001.)

92-19-76. Sales to political subdivisions of the state of Kansas. (a) All direct purchases of tangible personal property and taxable services by a political subdivision of the state of Kansas shall be exempt from sales tax, unless otherwise provided by law.

(b) To qualify as a direct purchase, each bill, invoice, contract or other evidence of the transaction shall be made out in the name of the political subdivision which qualifies for an exemption under the act, and each payment shall be made on the check, warrant or voucher of that political subdivision.

(c) All sales of tangible personal property or taxable services made to and paid for by an agent, employee or other representative of a political subdivision shall be subject to sales tax, unless expressly authorized under a project exemption certificate issued by the department of revenue, even though the same purchase would have been exempt from sales tax had the political subdivision directly purchased the tangible personal property or service. Any contractual arrangement or understanding between an agent or employee and a political subdivision shall not be recognized by the department, and the retailer shall charge and collect the sales tax on the total selling price of tangible personal property or service, even though:

(1) The agent or employee may be on official business on behalf of the political subdivision;

(2) is on a per diem from the political subdivision;

(3) is on an expense account, allowance or shall otherwise be reimbursed by the political subdivision; or

(4) has or will receive monies, credits or other assets from the political subdivision to pay for the transaction.

(d) The exemption from sales tax for political subdivisions applies only to the extent the political subdivision is not engaged nor proposes to engage in the business of furnishing gas, water, electricity or heat to others and the tangible personal property or taxable services are used or proposed to be

used in such business. When a political subdivision is engaged or proposes to engage in furnishing any of these four businesses, the political subdivision shall pay sales tax on all purchases of tangible personal property and taxable services used in these businesses. Nothing under this section of the act shall be construed to limit other exemptions which may be available to a political subdivision which furnishes gas, water, electricity or heat. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

92-19-77. Sales to the United States, its agencies and instrumentalities. (a) All direct purchases made by the United States, its agencies or instrumentalities for the use of the United States, its agencies or instrumentalities shall not be taxable except when the United States has provided by federal statute that a particular agency or instrumentality shall be subject to a state's tax laws.

(b) To qualify as a direct purchase, each bill, invoice, contract or other evidence of the transaction shall be made out in the name of the United States, its agency or instrumentality, and payment shall be made on a federal check, warrant or voucher.

(c) Sales of tangible personal property or taxable services made to and paid for by an agent, employee or other representative of the United States, its agencies or instrumentalities shall be taxable, even though the same purchase would have been exempt from sales tax had the United States, its agency or instrumentality directly purchased the tangible personal property or services. Contractual arrangements or understandings between an agent or employee and the United States, its agencies or instrumentalities shall not be recognized by the department, and the retailer shall charge and collect the sales tax on the total selling price of tangible personal property or services, even though the agent or employee:

- (1) is on official business on behalf of the United States, its agencies or instrumentalities;
- (2) is on a per diem;
- (3) is on an expense account, allowance or shall otherwise be reimbursed by the United States, its agencies or instrumentalities; or
- (4) or has or shall receive monies, credits or other assets from the United States, its agencies or instrumentalities to pay for the transaction.

(d) All sales of tangible personal property and taxable services sold to national banks, federal savings and loans and federal credit unions shall be subject to Kansas sales tax. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

92-19-78. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3615; effective May 1, 1988; revoked June 26, 1998.)

92-19-79. Oil, gas and water wells. (a) Sales of drilling materials or other property incorporated into an oil, gas or water well to contractors, subcontractors or repairmen for use by them in original construction projects including drilling, equipping, furnishing, repairing, servicing, altering, maintaining, enlarging or redrilling shall be subject to sales tax. Each contractor shall be considered the final user or consumer of materials used by them in the construction projects. A contractor, subcontractor or repairman shall not give, and retailers shall not accept, a resale exemption certificate to purchase the materials without sales tax.

(b) Each contractor, subcontractor or repairman shall be responsible for the payment of sales tax on all materials and supplies which are purchased for use by them in drilling, redrilling, or otherwise improving, altering or repairing oil, gas or water wells for others.

(c) Each contractor, subcontractor or repairman shall be responsible for collecting sales tax on taxable services performed for others, including taxable services performed for other contractors. A contractor, subcontractor or repairman shall not purchase or sell services exempt from sales tax under a resale exemption certificate.

(d) The taxable base for all contracts involving the application or installation of tangible personal property shall be the difference between the contract price and the cost of material, supplies and payments to subcontractors, including sales or compensating tax paid by the contractor on the materials, supplies and subcontractor charges purchased by the contractor to complete the contract.

(e) Contractors, subcontractors or repairmen who do not separately state the amount of sales tax for their services in the contract, bid estimate or customer billing shall include a statement in the document in substantially the following form: "All applicable sales taxes are included in the selling

price.” If the statement does not appear in the contract, bid estimate, billing or other evidence of the transaction, it shall be presumed that the sales tax was not charged to the consumer. If a statement does not appear on the document, the retailer shall carry the burden of proving that the sales tax was charged to the consumer and properly remitted to the state.

(f) The service of installing or applying tangible personal property in connection with original construction that is the first or initial construction of a new oil, gas or water well shall not be subject to sales tax. “Original construction” of an oil, gas or water well means all services performed by a contractor through the date of completion of the well. Any service performed in or on oil, gas or water wells other than as set forth herein shall be subject to sales tax. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988.)

92-19-80. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602; K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988, revoked, T-89-16, May 1, 1988; revoked Nov. 14, 1988.)

92-19-81. Abatement of final tax liabilities. The requirements and procedures for abatement of final sales and compensating tax liabilities shall be those requirements and procedures specified in K.A.R. 92-12-66a. (Authorized by and implementing K.S.A. 2005 Supp. 75-5155 and K.S.A. 2005 Supp. 79-3618; effective Dec. 13, 2002; amended May 27, 2005; amended April 13, 2007.)

92-19-82. Direct pay permits. (a)(1) “Certificate,” as used in this regulation, shall mean a direct payment certificate issued by the department to a permit holder that explains direct pay authority to retailers and can be provided to retailers in lieu of a direct pay permit.

(2) “Department” shall mean the Kansas department of revenue.

(3) “Kansas sales and use tax laws” shall mean the following:

(A) Chapters 36 and 37 of article 79 of the Kansas statutes annotated, and amendments thereto;

(B) K.S.A. 12-187 *et seq.*, and amendments thereto; and

(C) articles 19, 20, and 21 of these regulations.

(4) “Permit” shall mean a direct payment permit issued by the secretary that, under K.S.A. 79-

3619 and amendments thereto, allows the holder of the permit to accrue and pay state and local sales and use taxes directly to the department of revenue.

(5) “Secretary” shall mean the secretary of revenue or the designee of the secretary.

(b) Application for permit. Each application for a permit shall be submitted in writing to the secretary. The application shall contain the applicant’s name, address, and sales and use tax account numbers, the location of the place or places of business for which direct payment of tax will be made, the business’s standard industrial classification number or its equivalent, and any other information prescribed by the secretary.

(c) Qualification process and requirements.

(1) Each applicant for a permit shall demonstrate the applicant’s ability to comply with the Kansas sales and use tax laws. The applicant shall provide a description of the applicant’s accounting system and shall demonstrate that the system calculates the correct amount of state and local tax.

(2) The applicant shall provide documentation of at least one of the following:

(A) The applicant makes annual purchases of at least \$1 million of tangible personal property for business use and not for resale.

(B) The applicant purchases substantial amounts of property for business use under circumstances that normally make it difficult or impractical at the time of purchase to determine whether the property will be subject to or exempt from sales or use tax.

(3) The applicant shall provide a statement that explains the business purpose for the permit and demonstrates how the grant of direct payment authority will meet one or more of the following criteria:

(A) Insure tax compliance;

(B) reduce the administrative work needed to determine taxability, or to collect, verify, calculate, or remit tax;

(C) improve compliance with Kansas tax laws;

(D) provide accurate compliance if the determination of taxability of the item is difficult or impractical at the time of purchase;

(E) more accurately calculate tax using new or electronic business processes, including electronic data interchange, evaluated receipts settlement, and procurement cards; or

(F) more accurately determine and calculate tax, based on a showing that the applicant has significantly automated or centralized its purchasing

or accounting processes and that the applicant's business activities require it to comply with the laws and regulations of multiple state and local jurisdictions.

(4) Within 90 days of the date the secretary receives the application, the applicant shall be notified by the secretary of whether the permit is granted or denied or whether a conference shall be scheduled because additional documentation is required to complete the review.

(d) Recordkeeping requirements. Each permit holder shall maintain records necessary to determine the correct tax liability. These records shall be made available upon request by the secretary pursuant to K.S.A. 79-3610 and K.S.A. 79-3611, and amendments thereto. Books and records shall be retained in accordance with K.S.A. 79-3609, and amendments thereto, and K.A.R. 92-19-4b.

(e) Tax reporting. Each permit holder shall accrue and pay tax directly to the department for all taxable transactions on which direct payment authority applies or is claimed by the permit holder. The tax shall be reported on forms prescribed by the department. The tax owed shall be due and payable on the next tax return due following the date on which a determination of taxability is made, or in the exercise of reasonable care should be made, for a given transaction, unless otherwise provided by written agreement between the taxpayer and the department.

(f) Certain transactions not permitted. A permit holder shall not use the permit in connection with the following purchases:

- (1) Taxable meals or beverages;
- (2) taxable lodging or services related to lodging;
- (3) admission to places of amusement, entertainment or athletic events, and charges for use of amusement devices;
- (4) memberships, dues, fees, or other similar charges paid to private and public clubs or other organizations;
- (5) taxable fees to participate in sports, games, and other recreational activities;
- (6) motor vehicles, aircraft, boats, and other tangible personal property required to be licensed or titled with any taxing authority;
- (7) telephone or telegraph services, subscriber television or radio services, telephone answering services, mobile phone services, beeper services, and other similar services;
- (8) real property construction services taxable

under K.S.A. 79-3603, and amendments thereto; and

(9) any other purchases prescribed by the secretary or agreed to by the permit holder and the secretary.

(g) Permit holder duties. The permit holder shall provide a copy of the permit or certificate to each vendor from whom the holder purchases tangible personal property or services, other than to those identified in subsection (f). Once presented, a permit holder shall not be required to pay the tax to the vendor as prescribed by the Kansas sales and use tax laws, and the vendor who retains the permit or certificate as part of the vendor's records shall not be required to collect sales tax. The permit holder shall accrue and pay the tax directly to the department on all taxable transactions not taxed at the time of the sale. A vendor who has been presented a permit or certificate may rely on the permit or certificate until it is withdrawn by the permit holder or notice is otherwise given that the authority has been withdrawn. If the secretary and permit holder agree in writing, the permit holder may maintain accounting records in sufficient detail to show in summary, and in respect to each transaction, the amount of sales and use taxes paid to vendors who have been not been asked to honor a permit or certificate for each reporting period.

(h) Vendor responsibilities. Receipt and maintenance of a copy of a direct payment permit or certificate shall relieve the vendor of the responsibility to collect tax on sales made to a permit holder on qualifying transactions. Each vendor who makes sales upon which the tax is not collected because of this regulation shall maintain records that identify each sale, the amount of the sale, and the purchaser. The vendor's receipts from these sales shall not be subject to the tax levied under the Kansas sales and use tax laws.

(i) Local taxes. Each permit holder who makes taxable purchases of tangible personal property or services shall report and pay the applicable state and local tax on the purchases. A permit holder shall not use a permit as a device to defer payment of tax on purchases, or to avoid accruing and paying local sales tax to the appropriate local taxing jurisdiction pursuant to the local sales tax statutes.

(j) Revocation of permit.

(1) A direct payment permit shall not be transferable, and its use shall not be assigned to third parties, including contractors. A permit may be revoked by the secretary at any time if the sec-

retary determines that the holder has not complied with the provisions of the law or that revocation is in the best interest of the department. The department's interests shall include increased audit expenses caused by permits, including larger staff, additional travel expenses, and adoption of new systems for tax reporting and auditing. The written notice of revocation shall be effective at the end of the direct payment permit holder's next reporting period.

(2) If a business is reorganized but ongoing business operations are unchanged, the new entity shall be allowed 120 days to apply for a new permit. During the 120-day period, the previous permit shall remain in effect.

(3) Each person whose permit is voluntarily forfeited or is revoked by the department shall return the permit to the department and shall immediately notify all vendors from whom purchases of taxable items are made, advising them that the permit and any certificates are no longer valid and should not be honored. Failure to give this notification shall be a violation of K.S.A. 79-3651(e) and amendments thereto. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 2001 Supp. 79-3619; effective Aug. 23, 2002.)

92-19-200. Refund of sales tax paid upon food; definitions of "member of a household." (a) "Member of a household" shall mean any of the following:

(1) If the claimant files an individual income tax return, a person, other than the claimant, for whom a personal exemption is or may be claimed by the claimant for income tax purposes on the income tax return filed by the claimant for the year in which the food sales tax refund claim is made and who occupies a residence with the claimant for all or any part of the year;

(2) if the claimant does not file an individual income tax return, a person, other than the claimant, for whom a personal exemption could have been claimed by the claimant for income tax purposes for the year in which the food sales tax refund claim is made if an individual income tax return had been filed and who occupies a residence with the claimant for all or any part of the year; or

(3) a deceased spouse of a claimant for whom a personal exemption may be claimed by the claimant for income tax purposes for the year in which the food sales tax refund claim is made.

(b) "Member of a household" shall not include

a person for whom a personal exemption is not allowed to be claimed by the claimant for income tax purposes for the year in which the food sales tax refund claim is made, regardless of how long the person occupies a residence with the claimant. (Authorized by K.S.A. 79-3636; implementing K.S.A. 2001 Supp. 79-3633; effective April 18, 2003.)

92-19-201. Refund of sales tax paid upon food; definition of domicile; residency requirement; temporary absence. (a) "Domicile" shall mean that place where a person resides, where the person has an intention to remain, and to which that person intends to return following any absence.

(b) Each claimant shall have maintained a domicile within the state of Kansas and resided within the state of Kansas during the entire year preceding the year in which the claim is filed to be eligible for a food sales tax refund.

(c) For purposes of the food sales tax refund program, a claimant shall be domiciled in this state if the claimant resides in this state and maintains the principal home within this state.

(d) A temporary absence from the domicile shall not disqualify a claimant for a refund. A seasonal absence or absence of a reasonable duration shall constitute a temporary absence. (Authorized by K.S.A. 79-3636; implementing K.S.A. 2001 Supp. 79-3633; effective April 18, 2003.)

92-19-202. Refund of sales tax paid upon food; right of representative to make a claim on behalf of claimant. (a) Each individual filing a refund claim as a legal guardian or conservator of a claimant shall include with the claim an attested copy of the court order granting the power to act as a legal guardian or conservator for the claimant. A refund claim filed pursuant to the authority of a legal guardian or conservator shall be denied unless a copy of the court order granting the power to act as a legal guardian or conservator for the claimant is included with the refund claim.

(b) Each individual filing a refund claim as an attorney-in-fact for a claimant shall include with the claim a written document stating that an attorney-client relationship with the claimant exists. A refund claim filed pursuant to an authority of a power of attorney shall be denied unless a copy of the duly executed power of attorney for the claimant is included with the refund claim.

(c) An individual may file a refund claim on

behalf of the claimant if the individual completes and includes with the claim an affidavit in support of the demand for a food sales tax refund on a form prescribed by the director of taxation. (Authorized by K.S.A. 79-3636; implementing K.S.A. 79-3634; effective April 18, 2003.)

92-19-203. Refund of sales tax paid upon food; death of claimant subsequent to filing claim; disbursement of refund. (a) If a claimant dies after timely filing a refund claim and a member of the household survives, the surviving member shall submit an affidavit of membership in the claimant's household and either a copy of the claimant's death certificate or other proof of the claimant's death to the director before receiving a disbursement.

(b) If a claimant dies after timely filing a refund claim and was the only member of the household, the individual appointed as executor or administrator of the claimant's estate shall submit an attested copy of the court order appointing that individual as executor or administrator and either a copy of the claimant's death certificate or other proof of the claimant's death to the director of taxation before receiving a disbursement. If an executor or administrator has not been appointed and qualified, an heir at law shall submit an affidavit of heirship and either a copy of the claimant's death certificate or other proof of the claimant's death to the director of taxation before receiving a disbursement. (Authorized by K.S.A. 79-3636; implementing K.S.A. 79-3634; effective April 18, 2003.)

Article 20.—COMPENSATING TAX

92-20-1. Purposes. The Kansas compensating (use) tax act, as amended, supplements the Kansas retailers' sales tax act by imposing a like tax for the privilege of using, storing, or consuming within this state tangible personal property purchased at retail or for the privilege of utilizing taxable services within this state and in respect to which neither sales tax nor use tax of four percent or more has been imposed on property or taxable services by this state or any other state. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3702, 79-3703 as amended by L. 1986, Ch. 386, Sec. 3, 79-3704; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

92-20-2. (Authorized by K.S.A. 79-3703,

79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1987.)

92-20-2a. Transactions on which tax applies. Each person storing, using, or otherwise consuming personal property in this state is liable for the compensating tax regardless of whether the property was purchased or leased within or without this state. Unless the storage, use, or consumption of the property is exempt from compensating tax by K.S.A. 79-3704 and amendments thereto, each person shall be liable until the tax is paid to the state or collected by a retailer registered under the sales or compensating act. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3703 as amended by L. 1986, Ch. 386, Sec. 3; effective May 1, 1987.)

92-20-3. Sales tax rules and regulations also apply to compensating tax. Each Kansas retailers' sales tax rule and regulation relating to enforcement, collection, and administration, which are compatible to compensating tax rules and regulations, shall also apply to the enforcement, collection and administration of the Kansas compensating (use) tax act. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3702, 79-3703 as amended by L. 1986, Ch. 386, Sec. 3, 79-3704; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

92-20-4. Purchase price, consideration, trade-ins. The actual cost of transportation from the place where the article was purchased to the person using the same in this state is taxable as a part of the consideration and purchase price. Transportation costs mean freight, express, parcel post, or other hauling charges. It shall include charges for crating, packing and preparing tangible personal property for shipment.

The tax is applicable to the full amount of the contract in case of installment, conditional, or credit sales or purchases as the full amount is deemed to be contracted to be paid. Interest, finance or carrying charges on installment purchases are not a part of the purchase price and not taxable when such charges are separately made and so shown by the seller on invoices rendered the purchaser.

Discounts allowed by the seller and taken by the purchaser, shall be deducted in determining purchase price.

An amount equal to the allowance given for the trade-in of property on a sale shall be deducted in arriving at the purchase price.

A manufacturer's excise tax imposed by the federal government, paid at the source by the manufacturer, is a part of the purchase price and is taxable, even though the seller may segregate this tax on the sale invoice. (Authorized by K.S.A. 79-3702, 79-3703, 79-3707, K.S.A. 1971 Supp. 79-3602; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

92-20-5. Payment of tax. Each registered retailer as defined by this act shall collect from the consumer or user at the time of sale of tangible personal property or at the time of the furnishing of taxable services the full amount of the tax imposed by this act. The tax shall be a debt from the purchaser to the retailer and shall be added to the original purchase price. The tax is recoverable at law in the same manner as other debts. It is not to be absorbed by the registered retailer as part of the purchase price.

If the registered retailer fails to collect from the consumer or user the full amount of the tax, then the person using, consuming or storing taxable personal property in this state or utilizing taxable services furnished within this state shall file a return and pay the tax as required by K.S.A. 79-3706 and amendments thereto. The filing of a return by a user or consumer shall not relieve the registered retailer from the obligation of collecting the tax.

If the purchase is made from a nonregistered retailer, then the person using, consuming or storing taxable personal property or utilizing taxable services furnished in this state shall file a return and pay the tax as required by K.S.A. 79-3706 and amendments thereto. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3702, 79-3703 as amended by L. 1986, Ch. 386, Sec. 3, 79-3704, 79-3705, 79-3706; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

92-20-6. Filing of returns. Each registered retailer shall, on or before the 25th day of each month, file a return with the director on forms furnished by the director. The return shall cover the sale of tangible personal property or the providing of taxable services subject to the Kansas compensating (use) tax sold for use, storage, or consumption or provided within this state during the preceding reporting period in which the sales

or use occurred as prescribed in K.S.A. 79-3607 and amendments thereto.

The registered retailer or user shall remit, with the return, four percent of the total amount charged on all sales of tangible personal property or furnishing of taxable services to the purchaser, including transportation and other incidental charges. If transportation charges cannot be included or collected by the retailer, the purchaser shall pay the tax directly to the state.

Each individual or person who purchases tangible personal property or receives services furnished subject to the tax imposed by K.S.A. 79-3703 and amendments, for which the tax is not collected by the seller, shall file a return with the director as prescribed in K.S.A. 79-3607 and amendments thereto. The return shall show in detail the total purchase price of tangible personal property used, stored, or consumed by the person or the value of taxable services received within the state during the reporting period subject to the tax, with such other information as the director may deem proper. Each person making an individual return as a purchaser or consumer shall remit four percent of the purchase price, including transportation and other incidental charges with the return.

Each check shall be made payable to the director of taxation, state office building, Topeka, Kansas. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3704, 79-3705, 79-3706; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

92-20-7. Registration of out-of-state retailers; collection of tax by retailers. (a) A retailer shall be deemed to be doing business in this state when engaged in business within this state under, but not limited to, any of the following methods of transacting business:

(1) Maintaining directly, indirectly, or through a subsidiary, an office, distribution house, sales house, warehouse or other place of business;

(2) having an agent, salesperson, or solicitor operating within the state under the authority of the retailer or its subsidiary, regardless of whether the agent, salesperson or solicitor is located in this state permanently or temporarily, or whether the retailer or subsidiary is qualified to do business within this state; or

(3) soliciting orders within this state through catalogues or other advertising media.

The director shall require an out-of-state re-

tailer to apply for authority to collect and remit the tax.

Each retailer shall be deemed to have agents in this state even though the agents solicit sales intermittently; e.g., once a year or oftener, and regardless of the residency of the agent.

(b) Each retailer doing business in this state shall register, collect and remit the compensating (use) tax on tangible personal property sold for use, storage or consumption in this state, by any agent, salesperson, representative, trucker, peddler, or canvasser, regardless of whether:

(1) Sales are made on their own behalf or on behalf of the retailer;

(2) delivery and collection is made by the agent, salesperson, representative, trucker, peddler, or canvasser; or

(3) the property is shipped and collection is made by the retailer.

(c) Each salesperson, representative, trucker, peddler, canvasser, or agent shall collect the tax from the purchaser, if full collection is made from the purchaser, and remit the tax to the registered retailer. Each salesperson, representative, trucker, peddler, canvasser, or agent authorized by the retailer to make full collection from the purchaser shall be issued a compensating (use) tax registration identification card bearing the account identification number issued to the out-of-state retailer. Each salesman, representative, trucker, peddler, canvasser, or agent shall carry upon their person this identification card and shall show it to the purchaser as proof of authority to collect the compensating (use) tax.

(d) Each holder of a certificate of registration shall indicate the account identification number found on the certificate on each billing or invoice. The retailer shall bill the compensating (use) tax due, as a separate item, on each billing or invoice. The registered retailer shall give each purchaser a receipt for each remittance of compensating (use) tax paid to the retailer. Each receipt of remittance shall be proof the purchaser has paid the compensating (use) tax. The billing shall be in substantially the form as shown:

Merchandise	\$ _____
4% Kansas compensating (use) tax	\$ _____
Kansas registration number	_____

If the registered vendor maintains two or more locations from which tangible personal property may be invoiced, shipped and delivered into the

state of Kansas, duplicate certificates of registration shall be issued for each location.

(e) Each retail seller is required to report, collect and remit compensating (use) tax to the state of Kansas if:

(1) Tangible personal property is purchased for use, storage, or consumption in the state of Kansas;

(2) the seller is a retailer doing business in the state of Kansas;

(3) delivery is made in the state of Kansas; and

(4) use, storage or consumption is subject to the compensating (use) tax. Each registered retailer shall collect the tax even when the purchaser's order specifies that the goods are to be manufactured or procured by the seller at a point outside the state of Kansas and shipped directly to the purchaser from the point of origin. It is immaterial that the contract of sale is closed by acceptance outside the state or that the contract is made before the property is brought into the state of Kansas. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3702, 79-3704, 79-3705, 79-3706, 79-3708; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

92-20-8. Delivery. Delivery is held to have taken place in this state (1) when physical possession of tangible personal property is actually transferred to the buyer within this state or (2) when the tangible personal property is placed in the mails at a point outside this state directed to the buyer within this state or placed on board a carrier at a point outside this state (or shipped otherwise), and directed to the buyer in this state. (Authorized by K.S.A. 79-3703, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

92-20-9. Application for certificates. (a) Each retailer doing business in the state of Kansas shall apply for a certificate of registration. Each application shall be on a form prescribed by the director of taxation and shall include the following information:

(1) The name of the person, firm or corporation to whom the certificate is to be issued;

(2) the address of the location of each business;

(3) if the applicant is a corporation, the name and address of each officer;

(4) if the applicant is a partnership, the name and address of each partner;

(5) the name of the owner, if the applicant is an individual owner;

(6) the date when the applicant will begin selling tangible personal property subject to the Kansas compensating (use) tax;

(7) the name and address of each office, warehouse, or other place of business in Kansas, either owned or leased by the applicant or the applicant's subsidiary;

(8) the name and address of each agent, representative, or salesperson of the applicant operating in the state of Kansas, either temporarily or permanently; and

(9) the name and address of each out-of-state location from which tangible personal property will be delivered to purchasers in Kansas and from which billing for merchandise will be made.

(b) Each application shall be completed and mailed to the director of taxation, state office building, Topeka, Kansas. The director shall issue each registration certificate without cost to the applicant. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3702, 79-3703 as amended by L. 1986, Ch. 386, Sec. 3, 79-3704, 79-3705, 79-3706; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

92-20-10. (Authorized by K.S.A. 79-3702, K.S.A. 1973 Supp. 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1987.)

92-20-11. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3702, 79-3704, K.S.A. 1986 Supp. 79-3703; effective, E-70-33, July 2, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked Aug. 23, 2002.)

92-20-12. Sales tax exemptions also apply to compensating tax. The compensating tax does not apply in respect to the use, storage, or consumption of any article of tangible personal property or the furnishing of taxable services brought into or used within the state of Kansas if such article of tangible personal property or taxable services would not have been subject to the tax under the provisions of the retailers' sales tax act of this state if purchased or utilized in this state. (Authorized by K.S.A. 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

92-20-13. Property formerly used in another state. When property purchased in another state and used outside the state of Kansas is later brought into the state of Kansas for use, storage, or consumption, it will be presumed that compensating or use tax shall apply unless the purchaser conclusively establishes the following conditions:

(1) When purchased, the property was intended for bona fide use outside the state of Kansas;

(2) the first actual use of the property was outside the state of Kansas; and

(3) the first actual use of the property was substantial and constituted the primary use for which the property was purchased.

Each purchaser has the burden of proving these facts to the satisfaction of the director of taxation. (Authorized by and implementing K.S.A. 79-3702, K.S.A. 1986 Supp. 79-3703, 79-3704; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988.)

92-20-14. Purchases other than at retail; property used in processing. The test of a retail purchase is the purpose for which the purchase is made. Purchases for final use, storage, or consumption are retail purchases as distinguished from purchases for resale. The status of the seller is not a controlling factor; purchases at retail may be made from so-called retailers, or from jobbers, wholesalers, manufacturers, compounders, processors or other middlemen, or producers. The important consideration is whether the purchase is made for final use, storage or consumption.

Tangible personal property brought into the state for resale is not subject to the tax.

Tangible personal property stored for the purpose of resale is not subject to the tax.

Tangible personal property stored for subsequent use solely outside the state is not subject to the tax.

Tangible personal property shipped or brought into the state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state is not subject to the tax. (Authorized by K.S.A. 79-3702, 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

92-20-15. Property already subjected to sales or use tax. The sale or use of property on which the state of Kansas or any other state of the United States has imposed sales or use tax equal

to or greater than four percent (4%) is exempt from the tax. However, this exemption shall be denied if a tax paid in another state was not legally due and owing.

The sale or use of property on which the state of Kansas or any other state of the United States has imposed a sales or use tax at a rate of less than four percent (4%) is taxable at a rate determined by the difference between four percent (4%) and the rate of tax previously imposed.

Taxes imposed as a privilege tax which do not attach to the selling price of tangible personal property by law shall not be allowed as a credit against Kansas compensating (use) tax. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3704, 79-3705; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

92-20-16. Railroads—interstate commerce. All tangible personal property purchased out of the state and brought into the state of Kansas for use, storage, or consumption by railroads is subject to the tax in the same manner as is tangible personal property brought into the state by other firms, persons, or corporations, except as exempted herein.

Rolling stock, including locomotives, engines and cars of all kinds purchased by railroads in another state and brought into Kansas for movement in interstate commerce are exempt.

All repair parts and replacement material or parts brought into and stored in the state of Kansas which become a part of interstate commerce rolling stock are exempt. (Authorized by K.S.A. 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

92-20-17. Airlines—interstate commerce. Any airlines engaged in the transportation by aircraft of persons or property in interstate common carrier transportation shall be deemed to be a “public utility” as used in section 79-3704 (a) of the act.

All tangible personal property purchased out of the state and brought into the state of Kansas for use, storage, or consumption by such airline is subject to the tax in the same manner as is tangible personal property brought into the state by other firms, persons, or corporations, except as exempted herein.

All aircraft and flight equipment brought into the state for use in interstate transportation, in-

cluding equipment to be installed in such aircraft, shall be exempt.

All repair parts and replacement materials or parts brought into and stored in the state of Kansas which become a part of the aircraft or flight equipment operating in interstate commerce are exempt.

“Aircraft” when used herein, means airplanes or any vehicle used for air navigation. “Flight equipment” means any apparatus or accessories that are attached to or become a part of the aircraft. (Authorized by K.S.A. 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

92-20-18. Motor carriers—interstate commerce. Motor carriers authorized by the interstate commerce commission as common carriers and engaged in the transportation of persons or property shall be deemed to be a public utility within the meaning of the term “public utility” as used in section 79-3704 (a) of the act.

Charges for labor services rendered to common carriers authorized to engage in interstate commerce by the interstate commerce commission for the servicing, maintenance, or repair of rolling stock including buses and trailers are taxable.

All tangible personal property purchased out of the state and brought into the state of Kansas for use, storage, or consumption by common carriers is subject to the tax in the same manner as is tangible personal property brought into the state by other firms, persons, or corporations, except as exempted herein.

Rolling stock including buses and trailers, purchased by common carriers authorized to engage in interstate transportation by the interstate commerce commission, which tangible personal property is brought into the state of Kansas for movement directly and immediately in interstate commerce, is exempt.

All repair parts and replacement material or parts brought into and stored in the state of Kansas which become a part of interstate commerce rolling stock are exempt. (Authorized by K.S.A. 79-3704, K.S.A. 1973 Supp. 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended Jan. 1, 1974.)

92-20-19. Pipelines—interstate commerce. All pipelines engaged in the transportation of property shall be deemed to be a public

utility within the meaning of the term “public utility” as used in section 79-3704 (a) of the act.

All tangible personal property purchased out of the state and brought into the state of Kansas for use, storage, or consumption by pipelines is subject to the tax in the same manner as is tangible personal property brought into the state by other firms, persons, or corporations, except as exempted herein. (Authorized by K.S.A. 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

92-20-20. Radio broadcasting and television stations—interstate commerce. All tangible personal property purchased out of the state and brought into the state of Kansas for use, storage, or consumption by radio broadcasting and television stations is subject to the tax in the same manner as is tangible personal property brought into the state by other firms, persons, or corporations. (Authorized by K.S.A. 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

92-20-21. Telephone and telegraph companies—interstate commerce. All telephone and telegraph companies engaged in the transmission of messages shall be deemed to be a public utility within the meaning of the term “public utility” as used in section 79-3704 (a) of the act.

All tangible personal property purchased out of the state and brought into the state of Kansas for use, storage, or consumption by telephone or telegraph companies is subject to the tax in the same manner as is tangible personal property brought in to the state by other firms, persons, or corporations, except as exempted herein. (Authorized by K.S.A. 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

Article 21.—LOCAL RETAILERS’ SALES TAX

92-21-1. State sales tax regulations. The substance and provisions of all regulations pertaining to the state sales tax laws which are now in effect or which may hereafter be adopted and are not incompatible are hereby made a part of the local sales tax regulations as far as they are applicable. (Authorized by K.S.A. 79-3618, 79-3619, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

92-21-2. (Authorized by K.S.A. 79-3618, 79-3619, K.S.A. 1971 Supp. 79-3603, 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

92-21-3. Registration. A retailer’s registration under the state sales tax act is sufficient for the purposes of the local sales tax act. Special registration for collection of local sales tax will not be required. (Authorized by K.S.A. 79-3608, 79-3618, 79-3619, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

92-21-4. Interest—penalties—limitations—procedure. All interest, penalties and procedures such as the making of assessments, the venue and mode of conducting hearings, matters pertaining to review of decisions and statutes of limitation are the same as interest, penalties and procedures for state sales tax. (Authorized by K.S.A. 79-3607, 79-3609, 79-3618, 79-3619, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

92-21-5. Filing of returns. Every person responsible for the collection of local sales tax is required to make a combined state and local sales tax return to the department of revenue in the same manner and same time as required for filing state sales tax returns. The return form, including all schedules and instructions, is made a part of this regulation. (Authorized by K.S.A. 79-3618, 79-3619, 79-3607, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

92-21-6. Application of local sales tax. Local sales tax applies in any case in which state sales tax applies if the sale is consummated as provided by state statutes or regulations in a county or city having a local sales tax. Local sales tax applies to certain enumerated sales that are not subject to state sales tax including sales of natural gas, electricity, heat and water delivered through mains, lines or pipes to residential premises for noncommercial use. (Authorized by K.S.A. 1986 Supp. 12-189 as amended by Ch. 63, Sec. 2; implementing K.S.A. 12-189a as amended by L. 1987, Ch. 63, Sec. 2, K.S.A. 1986 Supp. 12-191; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; amended May 1, 1988.)

92-21-7. (Authorized by K.S.A. 79-3618,

K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; revoked April 13, 2007.)

92-21-8. (Authorized by K.S.A. 12-189 as amended by L. 1987, Ch. 63, Sec. 2; implementing K.S.A. 12-189 as amended by L. 1987, Ch. 63, Sec. 2, K.S.A. 1986 Supp. 12-191; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked April 13, 2007.)

92-21-9. Place of sale—telephone—gas—water—electricity—heat. For local sales tax purposes retail sales involving the use, consumption or furnishing of gas, water, electricity and heat shall be considered to have been consummated at the situs of the user or recipient thereof, and retail sales involving the use or furnishing of telephone service, shall be considered to have been consummated at the situs of the subscriber billed therefore. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

92-21-10. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-4425, 79-4426, K.S.A. 12-189 as amended by L. 1987, Ch. 63, Sec. 2; implementing K.S.A. 12-189 as amended by L. 1987, Ch. 63, Sec. 2, K.S.A. 1986 Supp. 12-191; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked April 13, 2007.)

92-21-11. Place of sale—no fixed place of business. Sales made by retailers who have no fixed or determinable place of business are considered, for local sales tax purposes, to be consummated at the place where the sale is made irrespective of the location of their permanent mailing address. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

92-21-12. Place of business—auctioneers. For the purpose of local sales tax the place of business of auctioneers who conduct auction sales in different taxing jurisdictions shall be deemed to be the place where the auction is held. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

92-21-13. Place of business—vending machines. The retailer's place of business when making sales through a vending machine is the place where the vending machine is located when such sales are made. (Authorized by K.S.A.

79-3618, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

92-21-14. Place of business; sales from vehicle. If a retailer makes actual sales or deliveries from a vehicle in which a stock of goods is being carried for sale, the retailer's place of business shall be each place where a sale or delivery is made. The vehicle carrying the stock of goods for sale shall be deemed to be a portable place of business. (Authorized by K.S.A. 2005 Supp. 12-189, as amended by L. 2006, Ch. 191, Sec. 2 and by L. 2006, Ch. 204, Sec. 2, and K.S.A. 2005 Supp. 75-5155; implementing K.S.A. 2005 Supp. 12-189, as amended by L. 2006, Ch. 191, Sec. 2 and by L. 2006, Ch. 204, Sec. 2, K.S.A. 2005 Supp. 12-191; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; amended April 13, 2007.)

92-21-15. Place of sale—meals, food and drinks sold on common carriers. Retail sales of meals, food and drinks sold on common carriers shall be considered to have been consummated at the place where the first element of the sale occurred. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

92-21-16. (Authorized by K.S.A. 79-3618, 79-3619, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; revoked April 13, 2007.)

92-21-17. (Authorized by K.S.A. 1985 Supp. 12-189; implementing K.S.A. 1985 Supp. 12-191; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; amended, E-77-1, Jan. 13, 1976; amended Feb. 15, 1977; amended May 1, 1987; revoked April 13, 2007.)

92-21-18. (Authorized by K.S.A. 79-3618, 79-3619, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; revoked June 26, 1998.)

92-21-19. Gross receipts as applied to local sales tax. Local sales tax is imposed on the gross receipts received from taxable retail sales. Gross receipts are the same for local sales tax purposes as they are for state sales tax purposes and shall include freight and transportation charges when such charges are subject to the state sales tax, regardless of the place to which delivery is made. (Authorized by K.S.A. 79-3618, 79-3619,

K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

92-21-20. (Authorized by K.S.A. 12-189, 79-3618, 79-3619; implementing K.S.A. 12-189, K.S.A. 1982 Supp. 79-3603; effective, T-83-48, Dec. 22, 1982; effective May 1, 1983; revoked May 1, 1987.)

92-21-21. (Authorized by K.S.A. 79-3618, 79-3619, K.S.A. 1985 Supp. 12-189; implementing K.S.A. 79-3603 as amended by L. 1986, Ch. 386, Sec. 1, K.S.A. 1985 Supp. 12-189; effective May 1, 1987; revoked June 26, 1998.)

Article 22.—HOMESTEAD TAX RELIEF

92-22-1. (Authorized by K.S.A. 79-4510, K.S.A. 1979 Supp. 79-4508; effective Jan. 1, 1974; amended, E-80-2, Jan. 18, 1979; amended May 1, 1979; revoked, L. 1980, ch. 342, May 1, 1980.)

92-22-2. (Authorized by K.S.A. 79-4501, 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked, E-80-2, Jan. 18, 1979; revoked May 1, 1979.)

92-22-3. (Authorized by K.S.A. 79-4510, K.S.A. 1978 Supp. 79-4501, 79-4502(e), 79-4508; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended, E-80-2, Jan. 18, 1979; amended May 1, 1979; revoked May 1, 1986.)

92-22-4. Domicile; temporary absence. (a) "Domicile" shall mean that place where a person resides, where the person has an intention to remain, and to which that person intends to return following any absence.

(b) The claimant shall have maintained a domicile within the state of Kansas during the entire year preceding the year in which the homestead claim is filed to be eligible for a homestead property tax refund.

(c) For purposes of the homestead property tax refund act, a claimant shall be domiciled in this state if the claimant resides in this state and maintains the principal home within this state.

(d) Temporary absence from the domicile shall not disqualify a claimant for a refund. A seasonal absence or absence of a reasonable duration shall constitute a temporary absence. (Authorized by K.S.A. 79-4510; implementing K.S.A. 2000 Supp. 79-4502; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986; amended April 19, 2002.)

92-22-5. Homestead used for rental or business purposes. If a portion of the homestead is used for rental or business purposes, that part of ad valorem property tax applicable to the rented or business portion of the homestead shall not be subject to refund. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4502; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986.)

92-22-6. (Authorized by K.S.A. 1976 Supp. 79-4502(i), 79-4502(j), 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

92-22-7. (Authorized by K.S.A. 1976 Supp. 79-4502(g), 79-4502(h), 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

92-22-8. Proof of disability. (a) Disability may be proved by filing a certified statement of a physician licensed to practice in the state of Kansas. In lieu of the statement, the claimant may file a copy of a social security or other employer's certificate of disability showing that the claimant is receiving benefits based upon a total and permanent disability which prevented the claimant from engaging in any substantial gainful activity during the entire calendar year preceding the year in which the claim is filed for refund.

(b) A statement signed by a physician licensed to practice in the state of Kansas indicating central visual acuity of 20/200 or less in the better eye with the use of correcting lens or a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall constitute medical proof establishing blindness. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4511; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986.)

92-22-9. (Authorized by K.S.A. 1976 Supp. 79-4502(a), 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

92-22-10. (Authorized by K.S.A. 1976 Supp. 79-4502(b), 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

92-22-11. Household income. Household income shall not include the income of a dependent minor or an incapacitated person who oc-

copies the homestead if the person is not seized of legal title or a party to the rental agreement of the homestead. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4502; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986.)

92-22-12. Ownership; definitions. Ownership shall include a vendee in possession under a land contract, a life tenant, a beneficiary under a trust and one or more joint tenants or tenants in common.

(a) Vendee in possession under land contract: a claimant purchasing a homestead under a land contract shall be deemed to be the owner thereof.

(b) Life estate: a claimant retaining a life estate in the homestead, with a remainder over, shall be deemed the owner thereof; provided that, the ad valorem taxes assessed upon such property are paid by the claimant.

(c) Beneficiary under a trust: a claimant who, as a beneficiary under a trust, possesses the homestead shall be deemed to be the owner thereof; provided that, the ad valorem taxes assessed upon such property are paid by the claimant.

(d) Joint tenancy: a claimant whose ownership interest in the homestead is in joint tenancy with one (1) or more individuals, shall be deemed to own the whole; provided that, all ad valorem property taxes assessed thereon are paid by the claimant.

(e) Tenancy in common: a claimant whose ownership interest is as a tenant in common with one (1) or more co-tenants, shall be deemed to own the whole; provided that, all co-tenants are members of the claimant's household and that all ad valorem property taxes assessed thereon are paid by the claimant. In the event one or more co-tenants are not members of the claimant's household, the claimant shall be deemed to own only that percentage of the property as reflects his legal interest.

(f) Multiple unit dwellings: two (2) or more claimants who are seized with legal title in a multiple unit dwelling such as a duplex, condominium or a similar type dwelling as joint tenants or tenants in common, and who maintain separate distinct units thereof as their individual homesteads, shall be deemed to own that portion of the multiple unit dwelling represented by their individual homestead units; provided that, each claimant has paid that portion of the ad valorem property tax assessed on the multiple unit dwelling proportion-

ate to the separate homestead unit that each claimant is deemed to own.

(g) Statutory inchoate spousal interest: a claimant whose homestead is held solely in the name of that claimant's spouse and whose spouse is ineligible as a claimant, shall be deemed to own the homestead pursuant to the statutory inchoate spousal interest set forth at K.S.A. 59-505, and for purposes of this act, the claimant shall be deemed to hold the same ownership interest as a tenant in common. (Authorized by K.S.A. 59-505, 1976 Supp. 79-4502(d), 79-4502(f), 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977.)

92-22-13. (Authorized by K.S.A. 1976 Supp. 79-4502(f), 79-4509, 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

92-22-14. Rent constituting property taxes accrued; services. A claimant shall not include services rendered within gross rent as an equivalent of cash. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4502; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986.)

92-22-15. (Authorized by K.S.A. 1976 Supp. 79-4502(e), 79-4507, 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

92-22-16. (Authorized by K.S.A. 1976 Supp. 79-4510, 79-4515; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

92-22-17. Exercise of right to file claim on behalf of claimant. Each individual filing a claim as a legal guardian or conservator shall attach an attested copy of the court order granting the power under which the claim is filed. An individual filing a claim as an attorney-in-fact shall attach a written document stating that an attorney-client relationship in fact exists. A claim for refund allegedly filed pursuant to the authority of a power of attorney shall not be allowed unless a copy of the duly executed and recorded power of attorney is attached to the claim. In lieu of a duly executed and recorded limited power of attorney, an individual may file a claim on behalf of the claimant if the person completes and submits to the director of taxation an affidavit in support of demand for homestead property tax refund on a form prescribed by the director. (Authorized by

K.S.A. 79-4510; implementing K.S.A. 79-4503; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended, E-80-2, Jan. 18, 1979; amended May 1, 1979; amended May 1, 1986.)

92-22-18. Death of claimant subsequent to filing claim; disbursement of refund.

(a) When a claimant dies after properly filing a timely claim, a disbursement to another member of the household shall not be allowed by the director of taxation unless an affidavit of membership in the claimant's household and a copy of the death certificate or other proof of death are submitted to the director.

(b) A disbursement to an individual appointed executor or administrator of the claimant's estate shall not be allowed unless an attested copy of the court order appointing that individual as executor or administrator and a copy of the death certificate or other proof of death are submitted to the director of taxation.

(c) A disbursement to an heir at law shall not be allowed unless an affidavit of heirship and a copy of the death certificate or other proof of death are submitted to the director of taxation. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4503; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986.)

92-22-19. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4505, 79-4517; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986; revoked April 19, 2002.)

92-22-20. (Authorized by K.S.A. 1976 Supp. 79-4508, 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

92-22-21. (Authorized by K.S.A. 1976 Supp. 79-4504, 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

92-22-22. (Authorized by K.S.A. 1976 Supp. 79-4502(f), 79-4502(i), 79-4502(j), 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked April 19, 2002.)

92-22-23. Computation of amount of claim; rental and ownership of a homestead during the same calendar year. (a) If a claimant owns a homestead and the claimant and the claimant's household occupy the homestead for a portion of a calendar year and for the remainder

of the calendar year rent and occupy another homestead, the claim for relief granted under the homestead property tax refund act shall be computed by adding together the following:

(1) The property taxes accrued for that portion of the calendar year the claimant and the claimant's household occupied the owned homestead; and

(2) the rent constituting property taxes accrued for that portion of the year the claimant and the claimant's household occupied the rented homestead.

(b) The sum of property taxes accrued and rent constituting property taxes accrued shall not exceed the amount allowed by K.S.A. 79-4509, and amendments thereto. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4508; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended April 19, 2002.)

92-22-24. (Authorized by K.S.A. 1976 Supp. 79-4502(d), 79-4502(f), 79-4502(i), 79-4502(j), 79-4509, 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked April 19, 2002.)

92-22-25. Proof in support of claim. (a) Proof of ownership of property for which a homestead property tax refund is claimed shall be provided by submitting a copy of the deed to the property to the director of taxation. If a deed has not been recorded to indicate ownership of the property by a claimant, the claimant shall complete and file with the director of taxation the following:

(1) A statement of ownership specifying the interest held in the property claimed; and

(2) a statement establishing by whom the property taxes are paid.

(b) Proof of income shall be provided by submitting a copy of the claimant's state or federal income tax return to the director of taxation. If the claimant did not file a state or federal income tax return for the period in question, the claimant shall file a signed schedule that shows the claimant's income from sources listed in K.S.A. 79-4502, and amendments thereto.

(c) Proof of a claimant's age shall be provided by submitting a copy of the claimant's birth certificate to the director of taxation. Proof of a dependent child's age shall be provided by submitting a copy of the dependent child's birth certificate to the director of taxation.

(d) Proof of household membership shall be provided by submitting a list of the following:

(1) The name of each individual residing in the household;

(2) the social security number of each individual residing in the household; and

(3) the relationship to the claimant of each individual residing in the household. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4511; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986; amended April 19, 2002.)

92-22-26. (Authorized by K.S.A. 1976 Supp. 79-4510, 79-4516; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

92-22-27 to 92-22-29. (Authorized by K.S.A. 1976 Supp. 79-4510, 79-4513; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

92-22-30. (Authorized by K.S.A. 1976 Supp. 79-4510, 79-4511(c); effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

92-22-31. (Authorized by K.S.A. 1976 Supp. 79-4510, 79-4514; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

92-22-32. Homestead; charges for services, furniture, personal property, etc. In computing gross rent, the amount of rent which is attributable to services, furniture, personal property, etc., is the fair retail value of such item or service and not the cost of such item or service to the landlord. The fair retail value of such items or services is their cost to the landlord plus a proportionate share of the overall profit earned from the rental of that homestead by the landlord. (Authorized by K.S.A. 1976 Supp. 79-4510; effective Feb. 15, 1977.)

92-22-33. Dependent children of claimant. A child shall be considered a dependent child if all of the following requirements are met for the calendar year for which the claim is submitted:

(a) The child was born before the beginning of the calendar year.

(b) The child is or may be claimed as a dependent by the claimant for income tax purposes.

(c) The child resided with the claimant, and

solely with the claimant, for the entire calendar year.

(d) The child did not reach the age of 18 during the calendar year. (Authorized by K.S.A. 79-4510; implementing K.S.A. 2000 Supp. 79-4502; effective April 19, 2002.)

92-22-34. Complete filing required. (a) A refund claim shall not be considered actually filed with or in the possession of the department of revenue until the claim is complete.

(b) To be considered complete, a refund claim shall disclose all information concerning the claim and shall be accompanied by any proof required in support of the claim necessary for the department to determine if the claim should be allowed, adjusted, or disallowed.

(c) A refund claim that is not complete by the filing deadline established by K.S.A. 79-4505, and amendments thereto, shall be considered untimely and shall be denied, unless either of the following conditions is met:

(1) The claimant responds to requests for additional information from the department of revenue by furnishing the requested information within the time specified in writing by the department.

(2) The director of taxation agrees to extend the filing deadline or accept the claim after the filing deadline in accordance with K.S.A. 79-4517, and amendments thereto. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4505 and K.S.A. 2000 Supp. 79-4517; effective April 19, 2002.)

Article 23.—BINGO

92-23-1 to 92-23-3. (Authorized by K.S.A. 1975 Supp. 79-4708; effective, E-76-32, June 19, 1975; effective May 1, 1976; revoked May 1, 1985.)

92-23-4. Reserved.

92-23-5 to 92-23-8. (Authorized by K.S.A. 1976 Supp. 79-4701, 79-4706, 79-4708; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; rejected, L. 1977, ch. 318, April 21, 1977.)

92-23-9. Persons conducting bingo games. Any person engaged in the management, operation or conduct of a bingo game shall not also participate as a player in the same bingo game. (Authorized by K.S.A. 79-4708; implementing K.S.A. 79-4706, 79-4708; effective May 1, 1985.)

92-23-10. Verification of winners. The

winning numbers on the card or face of each announced winner of each call bingo game shall be verified by the following individuals: (a) At least one other call bingo player unrelated by blood or marriage to either the winning player or the caller of that bingo game; and

(b) one or more of the bingo workers using one of the following methods:

(1) The bingo worker shall call back the winning numbers while the other call bingo player looks at the face or card and verifies that the correct numbers are being called back. The winning numbers shall be called out loud so that the other players present can hear the numbers. The caller shall announce whether the card or face is a winner. In the case of a blackout game, the numbers not selected may be called by the bingo worker and other call bingo player to verify the winners.

(2) The bingo worker shall call out the card or face number while the other call bingo player verifies that the correct card or face number was called. The caller shall type the card or face number into the bingo machine with an electronic verifier and announce the bingo machine's response as to whether the card or face is a winner. (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective May 1, 1985; amended Feb. 22, 2002.)

92-23-11. Handling of hard cards. No person shall be allowed to select or set aside any hard cards for playing by such person or another person prior to the time that the hard cards are generally made accessible to all of the players prior to the start of a bingo session. At the end of each bingo session, all hard cards used during the session shall be returned to one common area. No person shall be allowed to set aside or reserve hard cards between sessions. All hard cards to be used for a particular session shall be shuffled prior to being sold or rented to the players so as to assure that cards returned from the previous session do not remain in the order in which they were returned. (Authorized by and implementing K.S.A. 79-4708; effective May 1, 1985.)

92-23-12. Communication of numbers needed to win prohibited. No person shall communicate verbally or in any other manner the number or numbers needed by any player to win a bingo game to any person involved in the conduct of that bingo game. (Authorized by and implementing K.S.A. 79-4708; effective May 1, 1985.)

92-23-13. Display of numbered objects used in conducting games. As each number is called during each bingo game, the selected object upon which such number appears shall be displayed to the players present so that each player who desires to see the number may do so. (Authorized by and implementing K.S.A. 79-4708; effective May 1, 1985.)

92-23-14. Schedule of bingo games. (a) Each organization applying for an original bingo license or for renewal of an existing bingo license shall furnish, at the time of such application, a schedule of bingo games that will be conducted by the organization. The schedule shall include the date and time of each session. If the bingo games will be conducted only occasionally or on irregular dates which have not been determined at the time of the application, the organization shall so state on the application form and shall furnish a schedule in accordance with subsection (b).

(b) Whenever a licensee intends to conduct bingo games on a date or at a time different from that previously furnished in writing to the secretary of revenue, the licensee shall submit written notice of the change to the bingo enforcement unit of the department of revenue at least seven days prior to the effective date of that change. (Authorized by K.S.A. 79-4708; implementing K.S.A. 79-4706; effective May 1, 1985.)

92-23-15. Bingo trust accounts. Each licensee required to establish and use a bingo trust account pursuant to K.S.A. 79-4706, and amendments thereto, shall comply with all of the following:

(a) The bingo trust account name shall include the word "bingo."

(b) Only receipts from the conduct of call and instant bingo games shall be deposited into the trust account. Funds from other sources shall not be deposited in the account.

(c) Cash prizes from call bingo games under \$500 and all prizes from instant bingo games may be paid from the daily gross bingo receipts before depositing these receipts in the bingo trust account, if a detailed written record is kept of the gross receipts, cash prizes paid, and net deposit made to the bingo trust account for the day.

(d) All payments made from the bingo trust account shall be made by check.

(e) Excess funds in the bingo trust account that are not needed for the payment of bingo prizes,

taxes, and expenses may be removed from the account by writing a check. These excess funds may be used for any lawful purpose of the organization pursuant to K.S.A. 79-4706, and amendments thereto. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective May 1, 1985; amended Feb. 22, 2002.)

92-23-16. Cashing of prize checks. Checks written by licensees for call bingo game prizes of \$500 or more shall not be cashed by any licensee or member of the licensed organization, any lessor of the premises, any employee or agent of the lessor, or any other person located upon the premises where the licensee is conducting bingo games. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective May 1, 1986; amended Feb. 22, 2002.)

92-23-17. Bond required for bingo distributors. Each distributor shall post a cash bond of \$1,000 at the time of initial registration. A distributor may subsequently be required by the director to increase the cash bond to an amount equal to three times the average monthly tax liability based upon the distributor's sales for the previous 12 months. If a distributor does not have 12 months of tax liability history to use for this calculation, then an estimate of the tax liability may be made by the director based upon the best information available. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4704; effective Feb. 22, 2002.)

92-23-18. Due date of tax return by bingo distributors. Each distributor shall submit a return and remit the tax due for each month's sale of bingo faces and instant bingo tickets by the 25th day of the month following the month in which the sales were made. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4704 and 79-4705; effective Feb. 22, 2002.)

92-23-19. Bingo; persons selling refreshments or performing janitor work. A person who is only selling refreshments or providing janitorial services for bingo games shall not be deemed to be participating in the management, conduct, or operation of bingo games. (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002.)

92-23-20. Bingo; house rules. Any licensee may impose restrictions on player eligibil-

ity and game procedures through the use of "house rules" if these house rules meet all of the following conditions:

(a) The "house rules" do not conflict with state laws and regulations and local ordinances.

(b) The "house rules" are conspicuously posted at the location where the call bingo cards and instant bingo tickets are sold.

(c) The "house rules" are uniformly and consistently enforced by the licensed organization. (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002.)

92-23-21. Bingo; reduction in value of prizes. Any licensee may make the value of the prize awarded to the winner of any call bingo game contingent upon the number of players participating, if the exact terms of the contingency are posted or announced to all of the players before their purchase of the cards for the game. (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002.)

92-23-22. Bingo; limitations on number of games and daily prize limit. If a licensee's call bingo game program is designed so that, under certain conditions, it could violate the statutory limit on the number of regular or special games per day or the statutory limit on the total prizes awarded in any one day, then the licensee shall design contingencies to prevent the violations. The licensee shall publicize the terms of these contingencies to the players before their purchase of cards for that day's call bingo games. (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002.)

92-23-23. Bingo; procedure for correction if wrong number called. (a) If a caller calls a number different from what is on the ball or other object selected by chance and this fact is brought to the caller's attention before the prize is awarded for that game, then the mistake shall be corrected by announcing that the correct number will be used rather than the incorrect number.

(1) If this correction results in one or more immediate winners, then the game shall be deemed complete at that point. If it can be determined who would have won first if the mistake had not been made, then the prize or prizes shall be awarded to this winner or these winners. If it cannot be determined which winner would have won first, then the prize or prizes shall be split as equally as possible among the winners.

(2) If this correction does not result in at least one winner, then the game shall be continued until there is a winner.

(b) If a caller calls a number different from what is on the ball or other object selected by chance and this fact is brought to the caller's attention after the prize or prizes have been awarded for that game, then no correction shall be made and the winner or winners shall retain their prize or prizes. (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002.)

92-23-24. Reserved.

92-23-25. Bingo; multiple winners. (a) Before the beginning of the first call bingo game of a session, the licensee shall notify the players of how the licensee intends to pay out the prize for each bingo game of that session if there are multiple winners.

(b) If a bingo player has a winning pattern simultaneously on two or more call bingo cards or faces, then that player shall be treated as a separate winner for each such winning card or face when determining the awarding of the prize or prizes for that game.

(c) If a bingo player has two or more winning patterns simultaneously on the same call bingo card or face, then the licensee may treat the player as a separate winner for each winning pattern when determining the awarding of the prize or prizes for that game only if the licensee has published a house rule to that effect. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective Feb. 22, 2002.)

92-23-26. Reserved.

92-23-27 and 92-23-28. (Authorized by K.S.A. 1976 Supp. 79-4701, 79-4703, 79-4706, 79-4708; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; rejected, L. 1977, ch. 318, April 21, 1977.)

92-23-29. Reserved.

92-23-30. Bingo; instant bingo. (a) Each licensee shall maintain and enforce written procedures to assure that its instant bingo tickets are sold only at the times and places permitted by law.

(b) Each prize for a winning instant bingo ticket shall be paid out to the winner only within the premises designated by the licensee for the conduct of bingo games and only during the time pe-

riod during which instant bingo tickets may be sold as defined by law.

(c) Once sold, instant bingo tickets shall remain within the premises designated by the licensee for the conduct of bingo games and shall be disposed of by placing them in receptacles provided by the licensee no later than the end of the bingo session. Subsequently, the licensee shall be responsible for arranging for the removal and disposal of the instant bingo tickets, except for winning tickets that the licensee may choose to retain.

(d) An instant bingo game in which the prize is awarded by matching the winning number in a call bingo game shall not be carried over from one bingo session to another. If not all of the tickets from a game have been sold before awarding a prize, then the amount of the prize may be reduced based upon a formula or schedule that has been made known to the players before the commencement of the instant bingo game. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective Feb. 22, 2002.)

92-23-31. Bingo; use of hard cards commencing July 1, 2003. Commencing July 1, 2003, a licensee may sell hard cards to, or permit the use of hard cards for the following: (a) Any person who has a mental or physical infirmity of such a nature that it is difficult or impossible for that person to use disposable bingo faces to play call bingo games. If the total receipts from the sale or rental of hard cards to these persons exceed \$100 in any one month, then these receipts shall be subject to the three percent bingo enforcement tax as provided in K.S.A. 79-4704, and amendments thereto; and

(b) any person at a bingo session if the licensee conducts not more than two bingo sessions during the license year. If the total receipts from the sale or rental of hard cards at a session exceed \$1,000, then these receipts shall be subject to the three percent bingo enforcement tax as provided in K.S.A. 79-4704, and amendments thereto. (Authorized by and implementing K.S.A. 2000 Supp. 79-4706; effective Feb. 22, 2002.)

92-23-32 to 92-23-36. Reserved.

92-23-37. Bingo; sufficiency of notice to licensee. All notices required to be mailed to the licensee under the provisions of this act, if mailed first class to the last known address as shown on the records of the department of revenue, shall

be sufficient for the purposes of this act. (Authorized by K.S.A. 1976 Supp. 79-4708; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977.)

92-23-38. Bingo; books and records; inspection and preservation. (a) Each licensee shall keep and maintain records that are necessary to determine the amount of tax due and to determine that the games of bingo operated or conducted by the licensee are operated or conducted in compliance with the bingo act, K.S.A. 79-4701 *et seq.*, and amendments thereto. The records shall show the following:

- (1) The date and location of each call bingo game conducted;
- (2) the name of the operator or manager who conducted or operated each bingo game;
- (3) the number of regular, special, mini, and progressive call bingo games played daily;
- (4) the value of all prizes awarded for each call bingo game played;
- (5) the value of all other prizes awarded in connection with games of bingo;
- (6) the date that every call bingo prize was awarded;
- (7) the name and address of each winner of a call bingo game in which the prize awarded was more than \$100 in value, and of all winners of prizes in disputed bingo games. A prize shall not be awarded to any individual who refuses to give the individual's name and address to a licensee in compliance with this regulation;
- (8) the daily total of receipts received by the licensee for admission, charges for participation, and any other charges in connection with games of bingo, with separate totals for call bingo and instant bingo;
- (9) the number of players present each day that bingo games are conducted;
- (10) for each progressive call bingo game, the winning and consolation prizes offered and the number of bingo balls required to win each of these prizes; and
- (11) the occurrence of any drawing conducted during each session and, if any drawing occurred, a description of the prize awarded and its fair market value.

(b) All books and records required by subsection (a) shall be preserved for a period of three years following the date on which the game to which they pertain was managed, operated, or conducted.

(c) All books and records maintained in com-

pliance with this regulation shall be available for, and subject to, inspection by the director of taxation or the director's authorized agents and employees at a location previously designated by the licensee. The books and records shall be subject to inspection at any reasonable time. The books and records for the preceding four months shall be available for inspection without advance notice at all times that the licensee is operating or conducting games of bingo.

(d) Each licensee shall provide all information, tax returns, and records regarding or related to the operation, management, or conduct of bingo games that is requested by the department of revenue. Failure to provide all requested information shall constitute grounds for revocation of a bingo license. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; amended, E-81-27, Sept. 10, 1980; amended May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended Feb. 22, 2002.)

92-23-38a. Disputed bingo game. (a) "Disputed bingo game" shall mean a game of bingo at which a participant or observer registers a complaint with a representative who is operating, conducting, or managing bingo games for a licensee. If the participant is not satisfied with the manner in which the complaint is handled, then the participant or observer may file a written complaint with the administrator of charitable gaming.

(b) Each bingo licensee shall, on the premises at which bingo games are played, post in plain view of the participants the address where bingo complaints may be filed. The address shall be provided to each licensee by the Kansas department of revenue. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706 and 79-4708; effective, E-81-27, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1985; amended Feb. 22, 2002.)

92-23-39. Bingo; filing of returns; notice; hearings; and revocation. On or before the last day of each calendar month, every licensee licensed to operate or conduct games of bingo in this state during the preceding calendar month shall make a return and remit all enforcement taxes due for such preceding month to the department of revenue. The return shall be made upon the forms prescribed and furnished by the department of revenue. If a licensee does not operate or conduct any games of bingo during such

preceding calendar month, a return must still be made. Upon violation of any terms of this act or of the rules and regulations adopted pursuant to this act, the secretary of revenue or his duly authorized agents or employees, after reasonable notice and a hearing, may revoke such license. All revocation proceedings shall be subject and conducted pursuant to the hearing procedures provided in K.A.R. 92, article 1. (Authorized by K.S.A. 1976 Supp. 79-4708; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977.)

92-23-40. Advertising. Each advertisement of any bingo game shall include the full name of the organization licensed to conduct the bingo game. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective, E-80-12, Aug. 8, 1979; effective May 1, 1980; amended Feb. 22, 2002.)

Article 24.—LIQUOR DRINK TAX

92-24-1 to 92-24-8. (Authorized by K.S.A. 1979 Supp. 79-41a01, 79-41a02, 79-41a03; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked, T-83-30, Oct. 25, 1982; revoked May 1, 1983.)

92-24-9. Definitions. As used in this article, these terms shall have the following meanings. (a) "Licensee" means a holder of a class A or class B license, drinking establishment license, temporary permit holder, or caterer license issued by the director of alcoholic beverage control.

(b) "Liquor drink tax" means the tax imposed by K.S.A. 79-41a02, and amendments thereto.

(c) "Secretary" means the secretary of revenue or the secretary's authorized representative.

(d) "Source record" means any of the following:

- (1) A dated customer service check or ticket;
- (2) a dated cash register tape, if coded to reflect the required information; or
- (3) an equivalent of the check, ticket, or tape in a form approved by the secretary. (Authorized by and implementing K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

92-24-10. Registration certificates; application; display; revocation. (a) (1) Application for a liquor drink tax registration certificate shall be made upon a form furnished by the sec-

retary. The application shall state the name of the applicant as specified on the applicant's license and the address at which the applicant proposes to engage in business. For a caterer, the address shall be where the principal place of business is located.

(2) Each application for a liquor drink tax registration certificate shall be accompanied by a copy of the applicant's license. If the applicant owes any liquor drink tax, penalty, or interest at the time of making application, payment shall be made before issuance of the liquor drink tax registration certificate.

(b) A separate liquor drink tax registration certificate shall be required for each license, and the licensee shall conspicuously display the liquor drink tax registration certificate on the premises. The licensee shall immediately report any change of location, name, or form of ownership of the licensed establishment to the director.

(c) The liquor drink tax registration certificate of any licensee may be revoked by the secretary for any violation of the provisions of this article or the provisions of K.S.A. 79-41a01 *et seq.* and amendments thereto, after providing due notice and an opportunity for a hearing. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14, 79-41a06; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

92-24-11. Application of tax. (a) The liquor drink tax shall apply to the gross receipts derived from the sale of any ingredients for drinks containing alcoholic liquor, whether mixed by the licensee or sold separately. The tax shall also apply to charges that are incidental to charges for drinks containing alcoholic liquor, which shall include the following:

- (1) Service, corkage, cooling, and serving charges;
- (2) fees or charges for the use of equipment owned by the licensee incidental to the serving of drinks containing alcoholic liquor; and
- (3) gratuities, except gratuities that are voluntarily given by the consumer or are separately stated on a source record and are entirely distributed to employees of the licensee in a form other than wages, salaries, or other compensation.

(b) If a single fee or charge is made for alcoholic liquor provided by a licensee in connection with room rental, soft drinks, water, and ice, the

entire fee or charge, less the amount normally charged for the room rental, shall be taxable. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a01, 79-41a02; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

92-24-12. Sales tax inapplicable. Items of tangible personal property subject to the liquor drink tax shall not be subject to retailers' sales tax. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a02, 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended March 22, 2002.)

92-24-13. Assumption of tax by licensee prohibited. (a) A licensee shall not advertise, hold out, or state to the public or to any consumer, directly or indirectly, any of the following:

(1) The liquor drink tax, or any part of the tax, will be assumed or absorbed by the licensee.

(2) The tax will not be considered as an element in the price charged to the consumer.

(3) The tax, or any part of the tax, will be refunded if it is added to the price charged to the consumer.

(b) The tax may be included in the stated drink price if the licensee conspicuously posts on the premises a sign provided by the secretary stating that drink prices include the liquor drink tax. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a02; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

92-24-14. Time for returns and payment of tax; forms. On or before the last day of each calendar month, each club, caterer, and drinking establishment licensed in this state shall submit a tax return to the secretary upon forms furnished by the secretary. The name and address of the licensee, the total amount of gross receipts from sales of alcoholic liquor sold during the preceding calendar month, and any other information that the secretary deems necessary shall be stated on the form. The amount of tax due, as shown on the return, shall be paid to the secretary at the time the return is submitted. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a02, 79-41a03, as

amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended March 22, 2002.)

92-24-15. Records required. (a) Each licensee shall keep records and books of all sales subject to the liquor drink tax, together with invoices, bills of lading, sales records, copies of bills of sale, source records, daily summaries, and other pertinent papers and documents. The records shall show the following:

(1) The amount charged consumers for drinks containing alcoholic liquor and the amount charged consumers for all other items;

(2) invoices detailing the purchase of alcoholic liquor;

(3) a detailed description of breakage, spillage, and mistakes; and

(4) a detailed description of liquor removed from inventory for the following purposes:

(A) Use in preparation of food; and

(B) consumption by the licensee or the licensee's employees.

(b) Each licensee shall make the books, records, other papers and documents available for inspection by the secretary of revenue or the secretary's authorized representative for a period of three years from the last day of the calendar year or of the fiscal year of the licensee, whichever comes later, to which they pertain. The licensee shall maintain the books, records, and other documents on the licensed premises for a period of 90 days. However, the licensee may maintain the books, records, and other documents after 90 days at another location. (Authorized by and implementing K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

92-24-16. Source record requirements. (a) Each licensee shall record on a source record the following information:

(1) Each individual serving of a drink containing alcoholic liquor, or the unit of serving used if the drink is not served as an individual separate serving, and the price charged for the drink;

(2) identification of each individual separate serving or other unit served as to the kind of drink; and

(3) the date of the transaction.

The licensee shall record the information in a clear manner. The licensee may use a system of

symbols or code, if the meaning is printed on the source record or on another document maintained on the licensed premises.

(b) For the purpose of subsection (a)(3), drinks containing alcoholic liquor sold after 12:00 midnight and before 2:00 a.m. shall be deemed to have been sold on the preceding day.

(c) Source records shall be maintained in sequence by date. (Authorized by K.S.A. Supp. 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 79-41a02, as amended by L. 1987, Ch. 182, Sec. 118, 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988.)

92-24-17. Daily summary. Each licensee shall prepare a daily summary of all information required to be recorded on source records, including the sale or service of drinks containing alcoholic liquor. The daily summary shall also show the number of servings, and the kind of drink. Proper identifying symbols or codes may be used in preparing the daily summary. (Authorized by K.S.A. 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 79-41a02, as amended by L. 1987, Ch. 182, Sec. 118, 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988.)

92-24-18. Licensee's inventory; sales slips. A licensee shall not possess in inventory on the licensed premises any alcoholic liquor not covered by a sales slip provided by the retailer or wholesaler. Each sales slip shall be maintained by the licensee for the period prescribed by K.A.R. 92-24-15 and shall be available and subject to inspection in accordance with the provisions of K.A.R. 92-24-15. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a02, 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

92-24-19. Price listing statements. Each licensee shall keep a price listing statement listing the current, normal retail selling price charged for each drink containing alcoholic liquor served by the licensee. The statement shall list the price for each individual serving and for any other unit of

serving served by the licensee. Whenever any price listing statement is updated by the licensee, the outdated price listing statement shall have recorded on it the period of time for which it was effective. The licensee shall maintain the outdated price listing statement for the period prescribed by K.A.R. 92-24-15 and amendments thereto, and the price listing statement shall be available and subject to inspection in accordance with the provisions of K.A.R. 92-24-15 and amendments thereto. (Authorized by K.S.A. 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 79-41a02, as amended by L. 1987, Ch. 182, Sec. 118, 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988.)

92-24-20. (Authorized by K.S.A. 1982 Supp. 79-41a03; implementing K.S.A. 1982 Supp. 79-41a02, 79-41a03; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; revoked, T-88-58, Dec. 16, 1987; revoked May 1, 1988.)

92-24-21. Report of alcoholic liquor lost through theft or disaster. Each licensee shall prepare a written report for the director setting out the number and size of containers and the brand, proof, age and category of alcoholic liquor lost through theft or disaster. A theft of alcoholic liquor shall be reported to the proper police or sheriff's department and shall be substantiated by the report of the police or sheriff's department. A disaster causing a loss of alcoholic liquor shall be reported to the director and shall be substantiated by an affidavit of an investigative employee of the department of revenue. (Authorized by K.S.A. 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 79-41a02, as amended by L. 1987, Ch. 182, Sec. 118, 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988.)

92-24-22. Determination of tax liability; presumption of taxable disposition. (a) The correct amount of liquor drink tax shall be determined by the secretary when examining the tax account of any licensee, on the basis of returns filed with the secretary, or any records or information that is available or is obtained from the licensee or any retailer or wholesaler who furnished alcoholic liquor to the licensee.

(b) If the secretary finds that the licensee has

failed to maintain or make available adequate records required by K.A.R. 92-24-15 through K.A.R. 92-24-21, or by K.S.A. 41-2601 *et seq.* and amendments thereto, the correct amount of the tax may be determined from any available source or records. The tax liability of the licensee may be estimated by using any available record for any period for which the licensee has failed to maintain records or file a return.

(c) In determining the tax liability of any licensee, it shall be presumed that the disposition of all alcoholic liquor purchased by the licensee is taxable unless the contrary is established. The burden of proving the contrary shall be upon the licensee and shall be established through authentic records.

(d) If the liquor drink tax is not separately specified upon the source records of the licensee, tax liability shall be determined upon the total gross receipts derived from the sale of alcoholic liquor. Deductions for tax included within stated drink prices shall not be allowed unless the licensee has posted a sign in compliance with the provisions of K.A.R. 92-24-13. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a02, 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

92-24-23. Bond. (a) Each applicant or licensee making application for a new license or for renewal of an existing license shall post or have posted with the department of revenue a bond in an amount equal to three months' average liquor drink tax liability or \$1000, whichever is greater, at the time of the application. New applicants who have no previous tax experience may estimate their expected liquor drink tax liability projected over a 12-month period and submit a bond in an amount equal to 25% of the projected tax liability or \$1000, whichever is greater. A certificate of liquor drink tax registration shall not be issued until the bond requirement is satisfied.

(b) Bond requirements may be satisfied through surety bonds purchased from a corporate surety, escrow bond agreements, or posting of cash bonds.

(c) At any time an additional bond may be required by the secretary of revenue if the existing bond is not sufficient to satisfy the three months' average liability of the licensee.

(d) The existing liquor drink tax bond requirement for any licensee may be waived by the secretary of revenue if the relief is requested in writing at the time of renewal and the licensee has remained compliant with K.S.A. 79-41a01 *et seq.* and amendments thereto, for a minimum of 24 consecutive months before the application for renewal. If, after the bond is released, the licensee becomes delinquent in filing and remitting the liquor drink tax, a bond shall be required for any subsequent renewal of the license. (Authorized by and implementing K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-85-58, Dec. 16, 1987; amended May 1, 1988; amended Jan. 4, 2002.)

92-24-24. Duty of licensees discontinuing business. Each licensee discontinuing business shall notify the secretary, return its liquor drink tax registration certificate for cancellation, and preserve all business records within this state for three years. A receipt shall be issued by the secretary upon the payment of taxes reported. (Authorized by and implementing K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

Article 25.—TRANSIENT GUEST TAX

92-25-1. Effective date for levy, repeal, or change in rate of transient guest tax. The effective date for the levy, repeal, or change in the rate of a city or county transient guest tax shall be the first day of the calendar quarter that follows either of these days: (a) The 30th day after the general or city primary election in which the levy, repeal, or rate change was approved; or

(b) the 60th day after any other type of election in which the levy, repeal, or rate change was approved. (Authorized by K.S.A. 2000 Supp. 12-1694, 12-1698; implementing K.S.A. 2000 Supp. 12-1693, 12-1694, 12-1697, and 12-1698; effective, T-83-48, Dec. 22, 1982; effective May 1, 1983; amended July 27, 2001.)

Article 26.—AGRICULTURAL ETHYL ALCOHOL PRODUCER INCENTIVE

92-26-1. Definitions. As used in this article these terms shall have the following meanings: (a) "Agricultural commodities" shall mean all ma-

terials used in the production of agricultural ethyl alcohol including grains and other starch products, sugar based crops, fruits or fruit products, forage crops and crop residue.

(b) "Wine gallon" means 231 cubic inches measured at 60 degrees.

(c) "Quarter or quarterly" means a period of time consistent with the calendar periods of Jan. 1-March 31, April 1-June 30, July 1-Sept. 30, and Oct. 1-Dec. 31.

(d) "Director" shall mean the director of taxation of the department of revenue.

(e) "Principal place of business and facility" means a plant or still located in the state of Kansas which produces or has the capacity to produce ethyl alcohol.

(f) "Produce or produced" means the process of manufacturing agricultural ethyl alcohol.

(g) "Spirits" means an inflammable liquid produced by distillation. (Authorized by and implementing L. 1987, Ch. 388, Sec. 4; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988.)

92-26-2. Applications; contents. (a) Each person eligible to receive funds from the Kansas qualified agricultural ethyl alcohol producer incentive fund shall file an application with the director of taxation on forms furnished by the director which shall contain the following information:

(1) The name of the person, firm or corporation applying for the incentive;

(2) if the applicant is a corporation, the name and address of each officer;

(3) if the applicant is a partnership, the name and address of each partner;

(4) if the applicant is an individual owner, the name of the owner;

(5) the location and address of each plant producing ethyl alcohol;

(6) the principal mailing address of the applicant;

(7) the applicant's alcohol, tobacco and firearms permit number;

(8) the agricultural commodities to be used in the production of agricultural ethyl alcohol; and

(9) such other information as the director shall require.

(b) Each application shall be completed and mailed to the director of taxation. The applicant shall receive a formal letter of acceptance when the application is approved. (Authorized by and

implementing L. 1987, Ch. 388, Sec. 4; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988.)

92-26-3. Alcohol blender requirements; licenses. (a) Each person purchasing agricultural ethyl alcohol from a qualified agricultural ethyl alcohol producer for the purpose of blending alcohol in the state of Kansas shall have a valid manufacturer's license issued by the Kansas department of revenue.

(b) In order to qualify for the Kansas qualified agricultural ethyl alcohol incentive, each Kansas qualified agricultural ethyl alcohol producer exporting ethyl alcohol out-of-state shall sell agricultural ethyl alcohol only to persons authorized to blend alcohol in the state, province or country where the blender is located. (Authorized by L. 1987, Ch. 388, Sec. 4; implementing L. 1987, Ch. 388, Sec. 4, K.S.A. 79-3403; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988.)

92-26-4. Filing of quarterly reports; deadline. (a) (1) Each ethyl alcohol producer eligible to receive incentive funds shall file a Kansas qualified agricultural ethyl alcohol producer's report with the director of taxation within 30 days from the last day of each quarter. Each producer not filing a report within 30 days from the last day of the quarter shall be barred from seeking payment from the agricultural ethyl alcohol producer's fund for that quarter.

(2) Production incentives shall be paid on a quarterly basis from the new production account or the current production account in the agricultural ethyl alcohol producer incentive fund, whichever account is applicable. When the production incentive amount for the number of agricultural ethyl alcohol gallons sold by any producer to a qualified alcohol blender exceeds the balance in the applicable account at the time payment is to be made for that quarter's production, the incentive per gallon shall be reduced proportionately so that the current balance of the applicable account is not exceeded. Any amount remaining in the account following a quarterly payment of producer incentives shall be carried forward in that account to the next quarter for payment of future production incentives, except when the current production account balance is required by K.S.A. 79-34,161, and amendments thereto, to be transferred to the new production account.

(b) Each report shall be submitted on forms

furnished by the director and shall contain the following information:

- (1) The beginning inventory of denatured alcohol;
- (2) the amount of alcohol produced and denaturant added;
- (3) the amount of agricultural ethyl alcohol sold to qualified blenders;
- (4) the amount of denatured alcohol sold to other than qualified blenders;
- (5) the amount of denatured alcohol sold or used for miscellaneous purposes, including denatured alcohol that has been lost, destroyed, or stolen; and
- (6) any other relevant information that the director may require.

Each ethyl alcohol producer filing a quarterly report shall furnish all information required by the director before receiving the funds. (Authorized by K.S.A. 2003 Supp. 79-34,163; implementing K.S.A. 2003 Supp. 79-34,161 and 79-34,163; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988; amended Nov. 12, 2004.)

92-26-5. Record requirements, maintenance and retention. (a) Each producer shall maintain records with respect to:

- (1) The quantity of spirits produced;
- (2) the quantity of spirits on-hand and received;
- (3) the quantities and types of materials added to render the spirits unfit for beverage use;
- (4) the quantity of fuel alcohol manufactured;
- (5) records of materials used to produce ethyl alcohol;
- (6) all dispositions of spirits, including fuel alcohol.

(b) The records shall contain sufficient information to allow the director to determine the quantities of spirits produced, received, stored, or processed and to verify that all spirits have been lawfully disposed of or used. The producer may use records prepared for other commercial purposes if the records reflect the information required by paragraph (a) of this rule and regulation.

(c) Each producer shall retain the required records for a period of not less than three years. The records shall be maintained at the plant where production occurs and shall be available at all times during business hours of the day and be available for and subject to examination by the director or the director's duly authorized agent or employee. (Authorized by and implementing L.

1987, Ch. 388, Sec. 4; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988.)

92-26-6. Withdrawal of spirits and fuel alcohol; records required. (a) Before spirits may be withdrawn from the premises of an alcohol fuel plant, the producer shall render the spirits unfit for beverage use as required by 27 C.F.R. § 19.996 and amendments thereto.

(b) For each shipment or other removal of fuel alcohol from the plant premises, the consignor shall prepare a commercial invoice, sales slip, or similar document. The consignor shall include in the document the date, the quantity of fuel alcohol removed, a description of the shipment, and the name and address of the consignee. The consignor shall retain a copy of the document as a record and shall also provide the consignee and the liquid fuel carrier a copy of the record. (Authorized by and implementing L. 1987, Ch. 388, Sec. 4; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988.)

92-26-7. Funds erroneously paid. If the director of taxation determines from available reports and records that a producer has erroneously received moneys from the Kansas qualified agricultural ethyl alcohol producer incentive fund, the recipient, after receiving notification by the director, shall immediately refund to the director the amount erroneously paid. (Authorized by and implementing L. 1987, Ch. 388, Sec. 4; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988.)

Article 27.—QUALIFIED BIODIESEL FUEL PRODUCER INCENTIVE

92-27-1. Definition. “Quarter” shall mean any of the following periods in a calendar year:

- (a) January 1 through March 31;
- (b) April 1 through June 30;
- (c) July 1 through September 30; or
- (d) October 1 through December 31.

For the purposes of this article, the term “quarterly” shall be consistent with the definition of “quarter” in this regulation. (Authorized by and implementing K.S.A. 2006 Supp. 79-34,158; effective Nov. 2, 2007.)

92-27-2. Application. (a) Each person requesting funds from the Kansas qualified biodiesel fuel producer incentive fund shall submit an application with the secretary on a form furnished by the department of revenue, which shall include the following information:

(1) The name and address of the person, firm, or corporation applying for the incentive funds;

(2) if the applicant is a corporation, the name, title, and address of each officer and a copy of the articles of incorporation;

(3) if the applicant is a limited liability company, the name, title, and address of each officer and a copy of the articles of organization;

(4) if the applicant is a partnership, the name, title, and address of each partner;

(5) if the applicant is an individual owner, the name of the owner;

(6) the applicant's federal employer identification number or social security number;

(7) the applicant's principal mailing address and the street address of the location in Kansas where the applicant produces biodiesel fuel;

(8) specification of whether the plant location is owned or leased;

(9) the annual production capacity of the plant;

(10) the feedstock materials to be used in the production of biodiesel fuel;

(11) the production start date;

(12) a copy of the applicant's "certificate of analysis" verifying that the biodiesel fuel produced meets the applicable standards of the American society for testing and materials (ASTM); and

(13) any other relevant information that the secretary requires.

(b) Each application shall be completed and submitted to the secretary of revenue. The applicant shall receive notification when the application is approved or denied. (Authorized by K.S.A. 2006 Supp. 79-34,158; implementing K.S.A. 2006 Supp. 79-34,155, as amended by L. 2007, ch. 180, sec. 15, and K.S.A. 2006 Supp. 79-34,158; effective Nov. 2, 2007.)

92-27-3. Filing of quarterly reports; deadline. (a)(1) Each Kansas qualified biodiesel fuel producer shall file a Kansas qualified biodiesel fuel producer's report with the secretary within 30 days after the last day of each quarter. Each producer not filing a report within 30 days from the last day of the quarter shall be barred from seeking payment from the biodiesel fuel producer's incentive fund for that quarter.

(2) The production incentives shall be paid on a quarterly basis. If the production incentive amount for the number of gallons of biodiesel fuel sold by Kansas qualified biodiesel fuel producers exceeds the balance in the fund, the incentive per

gallon shall be reduced proportionately so that the fund balance is not exceeded. If any amount remains in the fund following a quarterly payment of Kansas qualified biodiesel fuel producer incentives, that amount shall be carried forward in the fund to the next quarter for payment of future production incentives.

(b) Each quarterly report shall be submitted on forms furnished by the department of revenue and shall include the following information:

(1) The beginning inventory of biodiesel fuel;

(2) the amount of biodiesel fuel produced;

(3) the type and amount of feedstock material purchased or produced to manufacture biodiesel fuel;

(4) the amount of biodiesel fuel sold to terminals and to licensed distributors, licensed importers, or licensed exporters;

(5) the amount of biodiesel fuel sold to retail stations, unlicensed distributors, unlicensed importers, unlicensed exporters, or end-consumers, or any combination of these;

(6) the total number of gallons of biodiesel fuel sold;

(7) all inventory adjustments, which shall include adjustments for personal use, loss due to theft, inventory loss or gain, and any destroyed biodiesel fuel;

(8) the ending inventory of biodiesel fuel;

(9) the amount of biodiesel incentive being claimed, based on the number of gallons sold; and

(10) any other relevant information that the secretary requires.

(c) Each Kansas qualified biodiesel fuel producer filing a quarterly report shall furnish all information required by the secretary before receiving any funds. (Authorized by and implementing K.S.A. 2006 Supp. 79-34,158; effective Nov. 2, 2007.)

92-27-4. Record requirements, maintenance, and retention. (a) Each Kansas qualified biodiesel fuel producer shall maintain the following records for each quarter:

(1) The quantity of biodiesel fuel produced;

(2) records of the type and amount of materials used to produce biodiesel fuel;

(3) the inventory of biodiesel fuel on hand; and

(4) the disposition of all biodiesel fuel.

(b) The records specified in subsection (a) shall contain sufficient information to allow the secretary to determine the quantities of feedstock materials and biodiesel fuel produced, received,

stored, or processed. Any Kansas qualified biodiesel fuel producer may use records prepared for other commercial purposes if the records contain the information required by subsection (a).

(c) Each Kansas qualified biodiesel fuel producer shall retain the required records for at least three years. The records shall be maintained at the plant where the production of biodiesel fuel occurs, shall be available at all times during business hours, and shall be subject to examination by the secretary or the secretary's designee.

(d) For each shipment or removal of biodiesel fuel from the place of production, the Kansas qualified biodiesel fuel producer shall prepare a commercial invoice, sales slip, or similar document. The Kansas qualified biodiesel fuel producer shall include in the document the date, the quantity of biodiesel fuel removed, a description of the product or shipment, the name and address of the consignee, and the destination city and state. The Kansas qualified biodiesel fuel producer shall retain a copy of the document as a record and shall also provide the consignee and the liquid fuel carrier with a copy of the record. (Authorized by K.S.A. 2006 Supp. 79-34,158; implementing K.S.A. 2006 Supp. 79-3415, 79-3420, and 79-34,158; effective Nov. 2, 2007.)

92-27-5. Funds erroneously paid. If the secretary determines from available reports and records that a Kansas qualified biodiesel fuel producer has erroneously received money from the Kansas qualified biodiesel fuel producer incentive fund, the Kansas qualified biodiesel fuel producer shall immediately refund to the secretary the amount erroneously paid, after receiving notification by the secretary. Any Kansas qualified biodiesel fuel producer who has refunded an amount of money to the secretary may submit a letter to the secretary or the secretary's designee requesting resolution through the informal conference process. (Authorized by and implementing K.S.A. 2006 Supp. 79-34,158; effective Nov. 2, 2007.)

Articles 28-49.—RESERVED

Article 50.—MANUFACTURE, DISTRIBUTION AND SALE OF MOTOR VEHICLES; REVIEW BOARD

92-50-1. (Authorized by K.S.A. 8-190, 8-2303, 8-2314; effective, E-74-57, Sept. 30, 1974; effective May 1, 1975; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-2 to 92-50-21. (Authorized by K.S.A. 8-2303, 8-2314; effective, E-74-57, Sept. 30, 1974; effective May 1, 1975; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-22 to 92-50-27. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-28. (Authorized by K.S.A. 8-143i, 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-29. (Authorized by K.S.A. 8-2303, 8-2304; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-30. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-31. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-32. (Authorized by K.S.A. 8-191, 8-2303; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-33. (Authorized by K.S.A. 8-2303, 8-2308; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-34. (Authorized by K.S.A. 8-2301, 8-2303, 8-2304; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-35. (Authorized by K.S.A. 8-135, 8-2303, 8-2308; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-36 and 92-50-37. (Authorized by K.S.A. 8-2314; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-38. (Authorized by K.S.A. 8-2303, 8-2304; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-39 and 92-50-40. (Authorized by K.S.A. 8-2314; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-41. (Authorized by K.S.A. 8-191, 8-

2314; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-50-42. Sales prima facie evidence of engaging in business; motor vehicle dealer license required. The sale of five (5) or more motor vehicles in any one (1) calendar year shall be prima facie evidence that a person is engaged in the business of selling motor vehicles and, unless rebutted or overcome by other evidence, shall require that person to obtain a motor vehicle dealer's license. A person shall be entitled to a hearing conducted in accordance with K.S.A. 1980 Supp. 8-2411 to rebut this evidence. (Authorized by K.S.A. 1981 Supp. 8-2423; implementing K.S.A. 1981 Supp. 8-2401, 8-2403, 8-2404; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982.)

92-50-43 to 92-50-56. Reserved.

92-50-57. (Authorized by K.S.A. 8-191; effective, E-78-17, July 7, 1977; effective May 1, 1978; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

Article 51.—TITLES AND REGISTRATION

92-51-1. (Authorized by K.S.A. 8-134; effective, E-77-17, March 19, 1976; effective Feb. 15, 1977; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-2. (Authorized by K.S.A. 8-191, 8-143 (2) (b), 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-3 and 92-51-4. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-5. (Authorized by K.S.A. 8-191, 8-135 (a), 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-6 to 92-51-8. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-9. (Authorized by K.S.A. 8-191, 74-2011, 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; re-

voked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-10. (Authorized by K.S.A. 8-191, 74-2011, 8-135, 74-2004; effective, E-71-9, Jan. 1, 1971; effective, Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-11. (Authorized by K.S.A. 8-191, 8-135(a), 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-12 and 92-51-13. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-14. (Authorized by K.S.A. 8-191, 8-143; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-15. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-16. (Authorized by K.S.A. 8-143b, 8-143c, 8-143d, 8-191, 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-17. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-18. (Authorized by K.S.A. 8-191, 8-143, 8-143a; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-19. (Authorized by K.S.A. 8-129, 8-191, 74-2011, 8-143i; effective, E-70-14, Jan. 19, 1970; effective Jan. 1, 1971; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-20. (Authorized by K.S.A. 1981 Supp. 8-143; effective Jan. 1, 1971; amended May 1, 1979; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-51-21. Staggered registration system. (a) All motorized bicycles, motor vehicles, and recreational vehicles, other than apportioned registered vehicles, mobile homes, trailers, antique vehicles, and trucks or truck tractors registered for a gross weight of greater than 12,000 pounds, shall be registered annually under a staggered registration system during one of 11 registration periods. The month of expiration of the

registration shall be embossed upon the number plate issued at the time of registration or shall be represented by a decal attached to the number plate in a location designated by the director.

(b) At the time of registration, the owner shall pay a prorated registration fee equal to $\frac{1}{12}$ of the annual registration fee multiplied by the number of months remaining in the registration period, including the month of expiration. Each registration period shall expire on the last day of the month as prescribed for the alpha letter designation on the plate or decal affixed to the plate, as determined by the first letter of the owner's surname in accordance with the following table:

ALPHABETICAL DESIGNATION FOR MONTHLY STAGGERED REGISTRATION

Alpha Letter Designation	Month	First Letter of Surname
A	February	A
B	March	B
C	April	C,D
E	May	E,F,G
H	June	H,I
J	July	J,K,L
M	August	M,N,O
R	September	P,Q,R
S	October	S
V	November	T,V,W
X	December	U,X,Y,Z

(Authorized by and implementing K.S.A. 8-134, 8-134a; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended Jan. 3, 2003.)

92-51-22. Registration period beginning date; fee due. The date of the assignment or reassignment of a manufacturer's certificate of origin or certificate of title shall be the beginning date of a registration period. The registration fee shall be due on that date, but may be paid at any time during a period of not to exceed 30 days, inclusive of weekends and holidays, after the assignment or reassignment. If the registration fee is not paid within the period of time prescribed by this regulation, the penalty for the late payment of the fee shall be computed from the date of the assignment or reassignment. (Authorized by K.S.A. 74-2011, K.S.A. 1984 Supp. 8-134; implementing K.S.A. 8-127, as amended by L. 1985, Ch. 43, Sec. 3; K.S.A. 1984 Supp. 8-143, as amended by L. 1985, Ch. 43, Sec. 8; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended, T-85-40, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986.)

92-51-23. Transfer of license plates; rebates and refunds disallowed. Neither rebates

nor refunds for license plate transfers shall be made if license plates are transferred to a vehicle of a lesser weight or a lesser carrying capacity. (Authorized by K.S.A. 74-2011, K.S.A. 8-134; implementing K.S.A. 8-135 as amended by L. 2002, Ch. 134, § 2; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended Jan. 3, 2003.)

92-51-24. Mailing of titles. (a) Each title without a lien or security interest processed by the division of vehicles shall be mailed directly to the owner unless the division is otherwise instructed by the owner.

(b) Each title with a lien or security interest held in electronic format shall be mailed to the owner once the lien or security interest is satisfied, unless the division is otherwise instructed by a person who satisfies the lien or security interest but who is not the owner. (Authorized by K.S.A. 74-2011, K.S.A. 8-134, as amended by 2003 HB 2189, § 1, and K.S.A. 2002 Supp. 8-135d; implementing K.S.A. 2002 Supp. 8-135, as amended by 2003 HB 2193, § 1, and K.S.A. 2002 Supp. 8-135d; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended Jan. 3, 2003; amended Jan. 23, 2004.)

92-51-25. Applications for title on used, foreign vehicles. (a) To secure a certificate of title on a used, foreign vehicle, the applicant shall provide the following documentation to the county treasurer:

(1) A form evidencing that the vehicle identification number has been verified by the Kansas highway patrol; and

(2) (A) The foreign title in the applicant's name and an affidavit of date of entry into Kansas;

(B) a foreign title that has been properly assigned to the applicant; or

(C) a foreign title that has been properly assigned to a registered dealer of the state in which the title was issued and that has been properly reassigned by the dealer of that state to the Kansas resident.

(b) If the foreign state does not have a title law, the applicant shall present a bill of sale from the seller of the vehicle and a foreign registration receipt. The foreign registration receipt shall meet one of the following requirements:

(1) Be in the applicant's name;

(2) be properly assigned to the applicant; or

(3) be reassigned by a registered dealer of the issuing state.

The foreign registration receipt and the bill of sale shall be surrendered to the county treasurer.

(c) If a foreign title is held by an out-of-state lienholder, a title shall not be issued by the division unless the out-of-state lienholder forwards the foreign title to the division. A faxed copy of the foreign title may be used for inspection and registration purposes pending receipt of the foreign title. (Authorized by K.S.A. 74-2011, K.S.A. 2002 Supp. 8-116a, K.S.A. 8-134, as amended by 2003 HB 2189, § 1, and K.S.A. 2002 Supp. 8-135d; implementing K.S.A. 2002 Supp. 8-116a and 8-135, as amended by 2003 HB 2193, § 1; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended, T-85-40, Dec. 19, 1984; amended May 1, 1985; amended Jan. 23, 2004.)

92-51-26. Corrections of titles and registration receipts. In the case of a clerical error on the title or registration receipt including the transposition of engine or serial numbers, misspelling of the name of owner, or a mistake in the year, model or make of car, or the omission of some necessary information on the application, correction of the error or submission of the omitted information shall be made through the Kansas department of revenue, division of vehicles, state office building, Topeka, Kansas 66626, or the department's designee. (Authorized by K.S.A. 74-2011, K.S.A. 1984 Supp. 8-134; implementing K.S.A. 1984 Supp. 8-135, as amended by L. 1985, Ch. 43, Sec. 6; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended May 1, 1986.)

92-51-27. Nonnegotiable titles. (a) A nonnegotiable title may be issued if the owner or lessee operates in more than one state and it is necessary to secure Kansas registration. This provision shall apply only to trucks and trailers.

(b) A nonnegotiable title shall not be used to transfer title of the vehicle. (Authorized by K.S.A. 74-2011, K.S.A. 8-134; implementing K.S.A. 8-1,111; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended Jan. 3, 2003.)

92-51-28. Printing of electronic titles. (a) Any title with a security interest that is held in an electronic format may be printed if the owner is not currently a Kansas resident and if all the following conditions are met:

(1) The owner moved from the state of Kansas and notified the lienholder of the owner's change of address.

(2) The lienholder provides the division with written or electronic permission to print the title.

(3) The titling authority of the owner's new jurisdiction requests that the title be printed and mailed directly to the titling authority and provides mailing instructions.

(b) Any title with a security interest held in electronic format may be printed if the owner, as defined by K.S.A. 8-1,100(h) and amendments thereto, is a Kansas resident and all of the following conditions are met:

(1) The owner is a motor carrier that has entered into a lease agreement for the vehicle for more than 28 days with a foreign state motor carrier.

(2) The foreign state will not accept an electronic title receipt for purposes of registration under the international registration plan.

(3) The titling authority of the foreign state requests that the title be printed and mailed directly to the titling authority. (Authorized by K.S.A. 8-134, as amended by 2003 HB 2189, § 1, K.S.A. 2002 Supp. 8-135d and 58-4204a; implementing K.S.A. 2002 Supp. 8-135, as amended by 2003 HB 2193, § 1, K.S.A. 2002 Supp. 8-135d and 58-4204a; effective Jan. 23, 2004.)

92-51-29. Eliminating title for manufactured or mobile home; fee required. A certificate of title shall be eliminated by the division upon receipt of the following:

(a) The owner's affidavit stating that the manufactured or mobile home has been permanently affixed to a foundation; and

(b) payment of a \$10.00 fee. (Authorized by K.S.A. 2002 Supp. 58-4215; implementing K.S.A. 2002 Supp. 58-4214; effective Jan. 23, 2004.)

92-51-30. Application for refund of registration fee. Any owner of a motor vehicle eligible for a refund of the registration fee shall file an application for the refund with the Kansas department of revenue, division of vehicles, state office building, Topeka, Kansas 66626, or the department's designee. At the same time, the applicant shall relinquish to the division of vehicles the registration plate and any attachment issued in connection with the registration, unless the plate has been relinquished to the county treasurer pursuant to K.A.R. 92-55-3. Application for refund shall be in the form prescribed by the division. (Authorized by K.S.A. 74-2011, K.S.A. 1983 Supp. 8-134; implementing K.S.A. 1984 Supp. 8-143; effective, E-82-26, Dec. 16, 1981;

effective May 1, 1982; amended, T-85-40, Dec. 19, 1984; amended May 1, 1985.)

92-51-31. Sale of 30-day license and certain 72-hour temporary registrations. (a) The motor carrier inspection bureau is hereby designated agent for the secretary of revenue to issue the 30-day licenses authorized by K.S.A. 1980 Supp. 8-143b and the 72-hour temporary registrations authorized by K.S.A. 1980 Supp. 8-143c.

(b) The motor carrier inspection bureau shall keep an accounting of all 30-day licenses and 72-hour temporary registrations issued and shall remit daily to the division of vehicles the amount collected in connection with the issuance of those licenses and registrations. (Authorized by K.S.A. 74-2011, K.S.A. 1981 Supp. 8-143c, 8-134; implementing K.S.A. 1981 Supp. 8-143b, 8-143c, 8-143d; effective, E-82-26, Dec. 16, 1982; effective May 1, 1982.)

92-51-32. Six thousand (6,000) mile registration requirements. The speedometer or odometer which records the number of miles traveled by a vehicle having a 6,000-mile registration shall be kept in working condition at all times during the registration period. The highway patrol, motor carrier inspection bureau, or any law enforcement officer shall have authority to inspect the readings of the speedometer or odometer and to inspect the vehicle to ensure that the speedometer or odometer is properly connected and in good working condition. The operator of this vehicle shall keep at all times in the vehicle a log reciting the date, the towns traveled in, and the distance operated on each trip. Anyone securing a 6,000-mile registration and not having the speedometer or odometer connected and in good working condition or not having the log in the vehicle shall have the vehicle registration suspended and the registration shall not be reinstated until the difference between the 6,000-mile and the regular registration fee on the vehicle is paid. (Authorized by K.S.A. 74-2011, K.S.A. 1981 Supp. 8-134; implementing K.S.A. 1981 Supp. 8-143; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982.)

92-51-33. (Authorized by K.S.A. 74-2011, K.S.A. 1981 Supp. 8-143; implementing K.S.A. 1981 Supp. 8-143; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; revoked July 27, 2001.)

92-51-34. (Authorized by and implement-

ing K.S.A. 1990 Supp. 8-132; effective, T-84-15, July 1, 1983; effective May 1, 1984; amended May 1, 1984; amended May 1, 1986; amended June 1, 1992; revoked Jan. 3, 2003.)

92-51-34a. License plates; extension of time for new issuance. (a) The current issuance cycle for new license plates shall be extended for an additional one-year period by the director of vehicles. During calendar year 2007, one decal shall be furnished for the license plate issued for each new registration of a vehicle, as provided in K.S.A. 8-134 and amendments thereto, and for each renewal registration of a vehicle. New license plates shall be issued during calendar year 2008 and during every fifth calendar year after 2008, for each new registration of a vehicle and for each renewal registration of a vehicle.

(b) During each of the four years following 2008 and during each of the four years following any year in which new license plates are issued, one decal shall be furnished for the license plate issued for each new registration of a vehicle and for each renewal registration of a vehicle. (Authorized by and implementing K.S.A. 2003 Supp. 8-132; effective Jan. 23, 2004; amended April 22, 2005.)

92-51-35. Prisoner of war number plates; application requirements. Each applicant for a distinctive number plate designating that person as a former prisoner of war shall submit proof in the form of documentation from the veteran's administration or from a branch of the armed services or in the form of a newspaper clipping verifying the applicant's former prisoner of war status. If no such documentation is available, two notarized statements from acquaintances of the applicant verifying the applicant's former prisoner of war status shall be submitted as proof. (Authorized by and implementing K.S.A. 1983 Supp. 8-177c; effective, T-84-35, Dec. 7, 1983; effective, T-85-12, May 3, 1984; effective May 1, 1985.)

92-51-36. Farm truck and farm truck tractor registrations; vehicle lettering requirements. Each farm truck and farm truck tractor registered for a gross weight of more than 54,000 pounds shall have painted or permanently affixed on both sides of the motor vehicle the words "farm vehicle—not for hire". The words shall have letters not less than two inches in height and not less than one-fourth inch in stroke. (Authorized by K.S.A. 74-2011; implementing K.S.A. 1984

Supp. 8-143; effective, T-85-40, Dec. 19, 1984; effective May 1, 1985.)

92-51-37. Lost or stolen personalized license plates; reissuance of different combination plates. If one or both of the personalized plates are lost or stolen, the vehicle owner shall make application for new plates with a different combination of numbers or letters. If only one plate is lost or stolen, the remaining plate shall be surrendered to the division of vehicles. (Authorized by and implementing K.S.A. 1984 Supp. 8-132; effective, T-85-40, Dec. 19, 1984; effective May 1, 1985.)

92-51-38. Unclaimed personalized, educational institution, and shriners' license plates. (a) The county treasurer shall retain all unclaimed personalized, educational institution, and shriners' license plates for 12 months after receipt from the manufacturer. At the end of the 12 months, the county treasurer shall destroy these personalized, educational institution, and shriners' plates and notify the division of vehicles of the plate combinations destroyed.

(b) The \$40 fee for the issuance of a personalized, educational institution, or shriners' license plate that is not claimed by the applicant shall not be refunded to the applicant. (Authorized by and implementing K.S.A. 8-132, as amended by L. 2002, Ch. 100, § 1; effective May 1, 1986; amended Jan. 3, 2003.)

92-51-39. Title and registration fees; refunds. Title and registration fees owed to the division of vehicles or to the applicant shall be processed with the payment of the annual registration fee. (Authorized by and implementing K.S.A. 8-134; effective May 1, 1986; amended Jan. 3, 2003.)

92-51-40. (Authorized by and implementing L. 1986, Ch. 36, Sec. 2; effective, T-87-25, Oct. 1, 1986; effective May 1, 1987; revoked, T-92-9-27-01, Sept. 27, 2001; revoked Jan. 4, 2002.)

92-51-41. Permanent registration of city, county, community college, and technical college vehicles. (a) The fee for permanent registration of the following vehicles shall be \$7.00:

(1) Each motor vehicle, trailer, or semitrailer that meets the following conditions:

(A) Is owned or leased by any city, county,

township, or school district, or by any agency or instrumentality of a city, county, or township;

(B) is used exclusively for governmental or school district purposes; and

(C) is not otherwise exempt from registration; and

(2) each truck tractor, trailer, or semitrailer that meets the following conditions:

(A) Is leased by a community college or technical college;

(B) is used exclusively for a truck driver training program; and

(C) is not otherwise exempt from registration.

(b) Each annual report filed with the division that identifies vehicles required to be permanently registered shall be submitted on a form approved by the director. (Authorized by and implementing K.S.A. 2004 Supp. 8-1,134, as amended by L. 2005, Ch. 62, § 1; effective, T-88-63, Dec. 30, 1987; amended May 1, 1988; amended Jan. 3, 2003; amended March 24, 2006.)

92-51-41a. Vehicles used as unmarked law enforcement vehicles; registration. (a) Each vehicle that is owned or leased by a governmental entity and that is used as an unmarked law enforcement vehicle shall be registered annually in accordance with K.S.A. 8-134, and amendments thereto, for property tax exemption purposes, as a vehicle of a political or taxing subdivision. The governmental entity that owns or leases that vehicle shall pay the registration fees for the alphanumeric plates issued for the vehicle.

(b) For purposes of this regulation, "governmental entity" means any of the following:

(1) The state of Kansas;

(2) any city, county, agency, or instrumentality of the state of Kansas; or

(3) any federal agency. (Authorized by and implementing K.S.A. 2004 Supp. 8-134; effective March 24, 2006.)

92-51-42. Odometer disclosure statement. When any person transfers a vehicle pursuant to K.S.A. 8-135 as amended by L. 1989, Ch. 36, Sec. 1 and amendments, and the existing certificate of title does not have a space for acknowledging the odometer certification, both the transferor and the transferee shall complete an odometer disclosure statement. (Authorized by K.S.A. 74-2011; implementing K.S.A. 8-135 as amended by L. 1989, Ch. 36, Sec. 1; effective Feb. 26, 1990.)

92-51-43 to 92-51-49. Reserved.

92-51-50. (Authorized by K.S.A. 8-149a; uniform vehicle registration proration and reciprocity agreement; Kansas-Oklahoma proration and reciprocity agreement; effective Jan. 1, 1966; revoked July 27, 2001.)

92-51-51. (Authorized by K.S.A. 8-149a; uniform vehicle registration proration and reciprocity agreement; Kansas-Oklahoma proration and reciprocity agreement; effective Jan. 1, 1966; revoked July 27, 2001.)

92-51-52. (Authorized by K.S.A. 8-149a; uniform vehicle registration proration and reciprocity agreement; Kansas-Oklahoma proration and reciprocity agreement; effective Jan. 1, 1966; revoked July 27, 2001.)

92-51-53. Vehicles exempt from apportioned registration. (a) Vehicles that are based in a state with which Kansas has an agreement for apportioned registration and that are owned by an individual engaged in farming and used by the owner to transport agricultural products produced by the owner or commodities purchased by the owner for farm use shall be exempt from apportioned registration.

(b) Motor vehicles based in Missouri that bear "local" Missouri registration shall be exempt from apportioned registration in Kansas if the vehicles are operated not more than 25 miles from the vehicle's base point in Missouri. Kansas 72-hour truck registration, 30-day truck registration, local registration, and regular registration shall not be applicable for the operation of the vehicle beyond the 25-mile radius. If the owner of the Missouri-based locally registered vehicle desires to operate beyond the 25-mile radius of the vehicle's base point, Missouri "beyond local," which is also known as commercial, registration shall be secured.

(c) A commercial motor vehicle based in Missouri that bears Missouri "beyond local," which is also known as commercial, registration shall be exempt from apportioned registration if the vehicle operation is restricted to any of the following:

(1) The corporate limits and a radius of four miles beyond the corporate limits of Elwood, Kansas, and to and from St. Joseph, Missouri to the St. Joseph municipal airport on U.S. highway 36, with the return trip to Missouri over the same highway;

(2) the corporate limits of Atchison, Kansas on U.S. highway 59, with the return trip to Missouri over the same highway;

(3) the corporate limits of Leavenworth, Kansas, Fort Leavenworth, Kansas, and the federal penitentiary by entry on Kansas highway 92 and U.S. highway 73, with the return trip to Missouri over the same highways; and

(4) the commercial zone of greater Kansas City as defined by the federal highway administration. (Authorized by K.S.A. 8-1,121; implementing K.S.A. 8-1,101; effective Jan. 1, 1966; amended Jan. 3, 2003.)

92-51-54. (Authorized by K.S.A. 8-149a; uniform vehicle registration proration and reciprocity agreement; Kansas-Oklahoma proration and reciprocity agreement; effective Jan. 1, 1966; revoked July 27, 2001.)

92-51-55. (Authorized by K.S.A. 8-149a; uniform vehicle registration proration and reciprocity agreement; Kansas-Oklahoma proration and reciprocity agreement; effective Jan. 1, 1966; revoked July 27, 2001.)

92-51-56. Leasing rules applicable to apportioned registration. (a) The definitions in this subsection shall apply to the leasing of vehicles by a carrier who is subject to apportioned registration. The terms "trip lease" and "lease" shall have the following meanings:

(1) "Trip lease" shall mean a one-way trip from one point to another point or from one point to another point and return.

(2) "Lease" shall mean a lease of 30 days or more. A lessee shall be considered the owner of the vehicle for the purpose of apportioned registration if continuous trip leases or rentals are issued on a day-by-day basis or week-by-week basis for a period totaling 30 days or more.

(b) If each of two separate carriers has a fleet of vehicles currently registered on an apportioned basis in Kansas, both carriers are conducting trailer interchange operations under rules of the federal highway administration, and the trailers interchanged are part of the fleets currently apportioned in Kansas by the separate carriers, no further registration shall be required for the trip-leased trailer.

(c) Household-goods carriers in which the agent is the lessor and the company is the lessee shall file and register as dual applicants. The agent shall have a fleet of vehicles. Application for ap-

portioned registration shall be filed solely in the name of the lessee carrier if the agent carrier does not have sufficient vehicles to constitute a fleet. The application for apportioned registration shall be based on the lessor's equipment, and the total miles the lessor operates under the lessor's name and that of the lessee.

(d) Rental equipment companies that have fleets of vehicles for short-term rentals, which is less than a 30-day lease, and that operate interstate shall be required to secure apportioned registration. The company shall maintain adequate records for completion of an apportioned application or audit. Daily rental equipment firms that do not maintain adequate records for completion of an apportioned application shall be required to fully license the daily rental vehicles if based in Kansas or shall be subject to a 72-hour truck registration fee if based in a state other than Kansas.

(e) If an apportioned fleet carrier, foreign or Kansas, trip leases a truck or truck-tractor that is apportioned with Kansas from another prorated carrier, no further registration shall be required if the truck or truck-tractor is not operated with a greater gross weight vehicle registration. If the gross weight registration secured by the lessor apportioned carrier is insufficient for the gross weight of the vehicle when trip leased, then the lessee apportioned carrier shall be subject to a 72-hour truck registration fee if the vehicle is based in a state other than Kansas. If the vehicle is based in Kansas, then the lessor apportioned carrier shall secure proper gross weight registration of the vehicle through the division of motor vehicles.

(f) If an apportioned fleet carrier, foreign or Kansas, leases or trip leases a truck or truck-tractor that bears Kansas "regular" class of registration, no further registration shall be required if the gross weight of the vehicle when trip leased by the lessee apportioned carrier is not greater than the gross weight registration secured by the lessor carrier. If the gross weight of the vehicle is greater than the gross weight registration, then the registered owner of the vehicle shall make application for proper gross weight registration through the office of the county treasurer.

(g) If an apportioned fleet carrier, foreign or Kansas, leases a foreign-based vehicle for a period of more than 30 days and the vehicle is apportioned in the name of another carrier, then the apportioned registration of the vehicle shall be in the lessee's name.

(h) If an apportioned fleet carrier, foreign or

Kansas, leases a vehicle for a period of 30 days or more and the vehicle has been apportioned by a Kansas-based carrier, then apportioned registration shall be in the name of the lessee.

(i) If an apportioned fleet carrier, foreign or Kansas, leases or trip leases a truck or truck-tractor that is fully licensed in a state other than Kansas, then the vehicle shall be subject to apportioned registration in Kansas by the fleet carrier.

(j) If a Kansas-apportioned vehicle that is trip leased by a carrier who is a resident of or based in a state with which Kansas has an agreement for interstate reciprocity, no further registration shall be required. The lessee carrier shall report the mileage operated by the lessor or apportioned carrier.

(k) Each apportioned fleet owner shall place in each fleet vehicle that is subject to a lease or rental arrangement an authentic copy or a memorandum of the lease or rental agreement. The agreement or memorandum shall contain the following:

(1) The complete and full names of the lessor and lessee;

(2) a description of the leased or rented vehicle by year, make, and vehicle identification number;

(3) the effective and expiration dates of the lease or rental agreements; and

(4) the signatures of the lessee and lessor, or their duly authorized agents.

The agreement or memorandum shall be carried in the cab of the vehicle described in the agreement, or the cab of the vehicle supplying the motive power if the vehicle is a trailer.

(l) Each fleet owner that is subject to a lease, shall include the apportioned application, the effective date of the lease, and the name and address of the lessor. (Authorized by K.S.A. 8-1,121; implementing K.S.A. 8-1,101; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 3, 2003.)

92-51-57. (Authorized by K.S.A. 8-149a; uniform vehicle registration proration and reciprocity agreement; Kansas-Oklahoma proration and reciprocity agreement; effective Jan. 1, 1966; revoked Jan. 3, 2003.)

92-51-58. (Authorized by K.S.A. 8-149f; Kansas-Missouri supplemental proration and reciprocity agreement; effective Jan. 1, 1966; revoked Jan. 3, 2003.)

92-51-59. Proportional registration fees due; transfer of certificate of title. When the

department has filed a lien upon vehicles which are part of a prorated fleet for failure to pay additional fees due Kansas, or upon failure of a prorated fleet carrier to pay a quarterly payment installment when the same is due and payable, titles to such fleet vehicles cannot be transferred or repossession titles to such vehicles be issued until the state's lien has been satisfied. (Authorized by K.S.A. 8-191, 8-149a, 8-149b; effective Jan. 1, 1966.)

92-51-60. (Authorized by K.S.A. 8-191, K.S.A. 1971 Supp. 8-149a, 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; revoked Jan. 3, 2003.)

92-51-61. (Authorized by K.S.A. 1978 Supp. 8-1,121; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1979; revoked Jan. 3, 2003.)

92-51-62. Proportional fleet registration; requirement of title to a fleet vehicle. In those cases where a vehicle is to be part of a fleet subject to proportional registration, and there is an outstanding negotiable title to such vehicle in the name of the fleet owner, whether such title is a Kansas title or a title issued by another state; or, in those cases where the vehicle is subject to a lease, and the lessor of such vehicle has an outstanding negotiable title issued by this state or another state, such fleet owner shall not be required to secure Kansas certificate of title. (Authorized by K.S.A. 8-191, K.S.A. 1971 Supp. 8-149a, 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972.)

Article 52.—MOTOR VEHICLE DRIVERS' LICENSES

92-52-1. Vision standards for drivers. Each driver's license examiner shall use the following vision standards for driver's license applicants:

(a) Each applicant testing 20/40 or better in at least one eye with or without corrective lens at the examination station shall meet the vision requirements. The driver's license examiner shall give each applicant failing to meet this test a vision form and refer the applicant to a vision specialist of the applicant's choice.

(b) Each applicant who has received a vision report from a vision specialist shall have 20/60 or better vision in at least one eye with or without corrective lens as determined by the vision specialist to be eligible to be issued a driver's license.

(c) The driver's license examiner shall require each individual with a reading of 20/60 in at least one eye with or without corrective lens to submit to a driver's test.

(d) Any applicant failing to meet any of the above standards may request an administrative review by the director of vehicles. (Authorized by and implementing K.S.A. 8-234b; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; amended May 1, 1979; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982; amended May 1, 1987; effective, amended May 1, 1988.)

92-52-2. (Authorized by K.S.A. 1978 Supp. 8-234b; effective May 1, 1979; revoked Jan. 3, 2003.)

92-52-3. Failure to apply for renewal of a driver's license. Except as otherwise provided in K.S.A. 8-247, and amendments thereto, each person who fails to apply for renewal of a driver's license within one year after the expiration date of the license shall complete a driver's license examination and pay the fees required for that renewal. (Authorized by K.S.A. 8-234b; implementing K.S.A. 8-247, as amended by L. 2002, Ch. 60, § 2; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 3, 2003.)

92-52-4. (Authorized by K.S.A. 74-2011; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-52-5. (Authorized by K.S.A. 8-191, 8-245c, 8-255, 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-52-6. (Authorized by K.S.A. 8-191, 8-255a, 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-52-7. (Authorized by K.S.A. 8-191, 8-255a, 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

92-52-8. (Authorized by K.S.A. 74-2011; effective Jan. 1, 1966; revoked Jan. 3, 2003.)

92-52-9. Definition of moving violation. (a) "Moving violation" means a conviction for violating any of the following:

(1) Any of the following Kansas statutes, and amendments thereto:

- (A) K.S.A. 8-235;
- (B) K.S.A. 8-237;
- (C) K.S.A. 8-244;
- (D) K.S.A. 8-262;
- (E) K.S.A. 8-287;
- (F) K.S.A. 8-291;
- (G) K.S.A. 8-296;
- (H) K.S.A. 8-1503;
- (I) K.S.A. 8-1507 through K.S.A. 8-1511;
- (J) K.S.A. 8-1514 through K.S.A. 8-1524;
- (K) K.S.A. 8-1526 through K.S.A. 8-1531a;
- (L) K.S.A. 8-1533;
- (M) K.S.A. 8-1535;
- (N) K.S.A. 8-1539 through K.S.A. 8-1540;
- (O) K.S.A. 8-1542;
- (P) K.S.A. 8-1545 through K.S.A. 8-1553;
- (Q) K.S.A. 8-1555 through K.S.A. 8-1560b;
- (R) K.S.A. 8-1561 through K.S.A. 8-1563;
- (S) K.S.A. 8-1565 through K.S.A. 8-1567;
- (T) K.S.A. 8-1568;
- (U) K.S.A. 8-1573 through K.S.A. 8-1576;
- (V) K.S.A. 8-1578 through K.S.A. 8-1578a;
- (W) K.S.A. 8-1580 through K.S.A. 8-1581;
- (X) K.S.A. 8-1584;
- (Y) K.S.A. 8-1595;
- (Z) K.S.A. 8-1599;
- (AA) K.S.A. 8-1703;
- (BB) K.S.A. 8-1725;
- (CC) K.S.A. 8-1759;
- (DD) K.S.A. 8-1910;
- (EE) K.S.A. 21-3405;
- (FF) K.S.A. 21-3442; or

(GG) any other Kansas statute that specifically provides that conviction for a violation of such statute is a moving violation;

(2) any similar municipal ordinance or county resolution in this state; or

(3) any similar statute, municipal ordinance, or regulation in another state.

(b) Nothing in this regulation shall be construed to prevent the division of vehicles from recording on individual driving records other administrative actions or convictions relating to vehicles. (Authorized by K.S.A. 8-249; implementing K.S.A. 8-249 and 8-255; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended June 1, 1992; amended, T-92-7-2-01, July 2, 2001; amended Oct. 26, 2001; amended Jan. 23, 2004.)

92-52-9a. Moving violations; suspension or restriction of driving privileges. (a) If

a person commits one or more moving violations on three separate occasions within a 12-month period, excluding the violations specified in K.S.A. 8-254, K.S.A. 8-285, and K.S.A. 8-291, and amendments thereto, then a warning notice shall be mailed by the division to the person advising the person that an additional violation may result in restricted driving privileges.

(b) If a person commits one or more moving violations on four separate occasions within a 12-month period, excluding the violations specified in K.S.A. 8-254, K.S.A. 8-285, and K.S.A. 8-291, and amendments thereto, then the person's license shall be restricted by the division for 30 days to driving under the circumstances provided in K.S.A. 8-292, and amendments thereto. The person shall be advised by the division that an additional violation may result in suspended driving privileges.

(c) If a person commits one or more moving violations on five separate occasions within a 12-month period, excluding the violations specified in K.S.A. 8-254, K.S.A. 8-285, and K.S.A. 8-291, and amendments thereto, then the person's license shall be suspended by the division for 90 days.

(d) If a person commits one or more moving violations on six or more separate occasions within a 12-month period, excluding the violations specified in K.S.A. 8-254, K.S.A. 8-285, and K.S.A. 8-291, and amendments thereto, then an order suspending the person's license for one year shall be issued by the division. (Authorized by K.S.A. 2000 Supp. 8-234b, K.S.A. 8-249; implementing K.S.A. 2000 Supp. 8-255, as amended by L. 2001, Ch. 200, § 2; effective June 1, 1992; amended, T-92-7-2-01, July 2, 2001; amended Oct. 26, 2001.)

92-52-10. (Authorized by and implementing K.S.A. 8-234b; effective, T-83-48, Dec. 22, 1982, effective May 1, 1983; revoked Feb. 26, 1990.)

92-52-11. (Authorized by K.S.A. 8-234b; implementing K.S.A. 8-234b; 8-237, K.S.A. 1985 Supp. 8-247 as amended by L. 1986, Ch. 38, Sec. 2, K.S.A. 1985 Supp. 8-255; effective May 1, 1987; revoked Jan. 3, 2003.)

92-52-12. Standards for vision examinations. (a) A "good driving record" as that term is used in L. 1989, Ch. 33, Sec. 1, shall mean that a person has not been involved in a motor vehicle accident, convicted of any moving violation as de-

fined in K.A.R. 92-52-9 and amendments, placed on diversion on a charge of a moving violation, or subject to adverse administrative action, resulting in suspension, revocation, restriction, denial, cancellation or non-renewal in Kansas or in any other jurisdiction during the immediately preceding three years.

In determining whether an individual has a "good driving record," consideration shall not be given to any person's previous failure to meet the 20/60 acuity standard of K.A.R. 92-52-1 and amendments. The standard for determining whether an individual has a "good driving record" shall not apply to any person who has never held a Kansas driver's license or permit or to any person who has never unlawfully operated a vehicle in Kansas without a Kansas driver's license or permit.

(b) Criteria to determine whether a person "can safely operate a vehicle" as that term is used in L. 1989, Ch. 33, Sec. 1 shall include:

(1) A statement by the person's ophthalmologist or optometrist that there is no reason to believe that the person's eyesight would preclude that person from operating a vehicle;

(2) a determination by both the director of vehicles and the Kansas medical advisory board that there is no reason to believe that the person's eyesight would preclude that person from operating a vehicle. The director of vehicles or the medical advisory board may require the person to submit to additional tests as they may in their discretion deem necessary to make a determination; and

(3) an actual test of the person's driving ability by an examiner employed by the division of vehicles at a time and place arranged by the director. Each test shall be performed by an examiner who has training and experience in testing a visually-impaired driver. Each person shall comply with sections (b) (1) and (2) before a driving test will be administered. A person shall not be permitted to take a driver's test if the examiner has cause to believe that allowing the person to drive may be potentially hazardous to the safety of themselves or others.

(c) Each person shall use the form provided by the division for the doctor's statement required in section (b) (1). A person may be required by the division to provide the following information:

- (1) Static visual acuity;
- (2) visual fields;
- (3) diagnosis of visual condition and prognosis;

(4) recommendation as to the extent of driving privileges to be permitted; and

(5) recommendations as to the need for and frequency of periodic reporting to the division of the status of the person's visual condition. (Authorized by K.S.A. 8-234b (d); implementing L. 1989, Ch. 33, Sec. 1 and 2; effective Feb. 26, 1990.)

92-52-14. Definitions. As used in this article, these terms shall have the following meanings:

(a) "Appropriate security clearance requirements" shall mean the following:

(1) Collection of fingerprints in order to perform a criminal history record check through the federal bureau of investigation and Kansas bureau of investigation;

(2) a check for lawful status through the systematic alien verification for entitlements program, or comparable system, to verify that the individual has lawful status in the United States; and

(3) any other security criteria deemed necessary by the director of vehicles to ensure the integrity of the division of vehicle's mission.

(b) "Covered position" means any of the following:

(1) A position within the department of revenue wherein the employee has the ability to affect identity information that appears on the driver's license or identification card, has access to the production process, or is involved in the manufacture of drivers' licenses and identification cards;

(2) a position with a private, third-party provider who has contracted with the department of revenue to manufacture and produce drivers' licenses and identification cards for the state; or

(3) a position held by any person whom the director of vehicles has authorized, pursuant to the authority granted by the motor vehicle drivers' license act, K.S.A. 8-234a et seq. and amendments thereto, to accept an application for a driver's license and administer the examinations required for the issuance or renewal of a driver's license.

(c) "Disqualifying offense" shall include any of the following crimes for which an applicant has been convicted or found not guilty by reason of insanity in a civilian or military jurisdiction:

- (1) Espionage;
- (2) sedition;
- (3) treason;

(4) any crime listed in 18 U.S.C. chapter 113B or in a comparable state law;

(5) a crime involving a transportation security incident;

(6) improper transportation of a hazardous material under 49 U.S.C. 5124 or a comparable state law;

(7) unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device;

(8) murder;

(9) conspiracy or attempt to commit any crime specified in this subsection;

(10) any violation of the racketeer influenced and corrupt organizations act, 18 U.S.C. 1961 et seq., or a comparable state law, in which one of the predicate acts found by a jury or admitted by the defendant consists of one of the offenses listed in paragraph (c)(4) or (c)(8);

(11) assault with intent to murder;

(12) kidnapping or hostage taking;

(13) rape or aggravated sexual abuse;

(14) unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export, or dealing in a firearm or other weapon;

(15) extortion;

(16) dishonesty, fraud, or misrepresentation, including identity fraud;

(17) bribery;

(18) smuggling;

(19) immigration violations;

(20) any violation of the racketeer influenced and corrupt organizations act, 18 U.S.C. 1961 et seq., or a comparable state law, other than the violations listed in paragraph (c)(10);

(21) robbery;

(22) distribution of, possession with intent to distribute, or importation of a controlled substance;

(23) arson;

(24) commission of a violent act that would not be conducive to maintaining a safe workplace; or

(25) conspiracy or attempt to commit the crimes in this paragraph.

(d) "Disqualifying security risk" shall include the following:

(1) An individual who has been convicted or found not guilty by reason of insanity of one or more disqualifying offenses;

(2) an individual working within the United

States who is not lawfully present in the United States; and

(3) an individual who is otherwise shown to be untrustworthy based on information obtained through appropriate security clearance requirements. (Authorized by and implementing K.S.A. 2007 Supp. 75-5156; effective Aug. 29, 2008.)

92-52-15. Applications for employment in a covered position. (a) Each selected candidate for employment in a covered position shall be subjected to appropriate security clearance requirements. If the selected candidate for employment is determined to be a disqualifying security risk, the candidate shall not be eligible for the covered position.

(b) The director of vehicles shall subject all current employees, county employees, and third-party contractors working in covered positions to appropriate security clearance requirements. If an employee or contractor is determined to be a disqualifying security risk, that employee or contractor shall not be eligible to retain the covered position.

(c) Appropriate security clearance requirements shall be used only to evaluate a selected candidate for employment and contracting purposes and shall not be used to discriminate on the basis of race, color, national origin, religion, sex, disability, age, veteran's status, or sexual orientation. (Authorized by and implementing K.S.A. 2007 Supp. 75-5156; effective Aug. 29, 2008.)

92-52-16. Third-party relationship requirement. Each county employee or third-party contractor contracting with the division of vehicles to provide services as described in K.A.R. 92-52-14(b)(2) and (3) shall submit to appropriate security clearance requirements and training required by law. (Authorized by and implementing K.S.A. 2007 Supp. 75-5156; effective Aug. 29, 2008.)

Article 53.—MOTOR VEHICLE INVENTORY TAX

92-53-1. (Authorized by K.S.A. 1978 Supp. 79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

92-53-2. (Authorized by K.S.A. 1978 Supp. 79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

92-53-3. (Authorized by K.S.A. 1978 Supp.

79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

92-53-4. (Authorized by K.S.A. 1978 Supp. 79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

92-53-5. (Authorized by K.S.A. 1978 Supp. 79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

92-53-6. (Authorized by K.S.A. 1978 Supp. 79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

92-53-7. (Authorized by K.S.A. 1978 Supp. 79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

Article 54.—SIGHT CLEARANCE CERTIFICATION

92-54-1. (Authorized by K.S.A. 66-1324; effective, E-81-20, July 16, 1980; effective May 1, 1981; revoked July 27, 2001.)

92-54-2. (Authorized by K.S.A. 66-1324; effective, E-81-20, July 16, 1980; effective May 1, 1981; revoked July 27, 2001.)

92-54-3. (Authorized by K.S.A. 66-1324; effective, E-81-20, July 16, 1980; effective May 1, 1981; revoked July 27, 2001.)

92-54-4. (Authorized by K.S.A. 66-1324; effective May 1, 1981; revoked July 27, 2001.)

92-54-5. (Authorized by K.S.A. 66-1324; effective, E-81-20, July 16, 1980; effective May 1, 1981; revoked July 27, 2001.)

Article 55.—MOTOR VEHICLE TAXATION

92-55-1. Definitions. Motor vehicle tax shall mean the tax imposed upon a motor vehicle pursuant to article 51 of chapter 79 of the Kansas Statutes Annotated.

Replacement motor vehicle shall mean any motor vehicle subject to motor vehicle tax which replaces a motor vehicle previously registered and subject to motor vehicle tax and to which the registration plates of the motor vehicle replaced are transferred. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5101 *et seq.*; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

92-55-2. Valuation of motor vehicles; classification. (a) The January 1980 midwest edi-

tion of the NADA Official Used Car Guide, published by the National Automobile Dealers Used Car Guide Company, is hereby adopted by reference for use by the various county appraisers in determining the trade-in value of all motor vehicles listed therein subject to motor vehicle tax. The winter 1980 edition of the Old Cars Price Guide, published by Krause Publications, Inc., is hereby adopted by reference for use by the various county appraisers in determining the trade-in value of all motor vehicles listed therein subject to motor vehicle tax which are not listed in the January 1980 midwest edition of the NADA Official Used Car Guide. The January through April 1980 edition of the NADA Recreational Vehicle Appraisal Guide, published by the National Automobile Used Car Guide Company, is hereby adopted by reference for use by the various county appraisers in determining the trade-in value of all recreational vehicles listed therein subject to motor vehicle tax. County appraisers shall determine the trade-in value of all motor vehicles not listed within the publications adopted by reference by using such manuals, guides or supplemental schedules devised or prescribed by the division of property valuation of the department of revenue and furnished to the counties by such division. Trade-in value of a specially constructed motor vehicle shall be determined through conferral with the division of property valuation of the department of revenue on a case-by-case basis.

(b) Trade-in value as determined from the sources enumerated in subsection (a) shall be classed pursuant to K.S.A. 1980 Supp. 79-5104 as follows:

<i>Trade-in Value</i>		<i>Class</i>
\$	0 - \$ 749	Class 1
	750 - 1,499	Class 2
	1,500 - 2,249	Class 3
	2,250 - 2,999	Class 4
	3,000 - 3,749	Class 5
	3,750 - 4,499	Class 6
	4,500 - 5,249	Class 7
	5,250 - 5,999	Class 8
	6,000 - 6,999	Class 9
	7,000 - 7,999	Class 10
	8,000 - 8,999	Class 11
	9,000 - 9,999	Class 12
	10,000 - 10,999	Class 13
	11,000 - 11,999	Class 14
	12,000 - 12,999	Class 15

<i>Trade-in Value</i>	<i>Class</i>
13,000 - 13,999	Class 16
14,000 - 15,999	Class 17
16,000 - 17,999	Class 18
18,000 - 19,999	Class 19
20,000 and over	Class 20

(c) Copies of guides adopted by reference in subsection (a) are on file and available for inspection in the office of the Kansas department of revenue, division of property valuation, 5th floor, state office building, Topeka, Kansas. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5102, 79-5103, 79-5104, 79-5108; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

92-55-2a. Valuation of motor vehicles; allowance for depreciation. (a) When the period for which an owner is seeking to register a motor vehicle covers a portion of two calendar years, the value of a motor vehicle to be registered shall be reduced by taking into account depreciation which is equal to the product determined by multiplying 16% by a fraction, the numerator of which is the number of months in the next succeeding calendar year remaining in the owner's registration year and the denominator of which is 12. The depreciation allowed hereunder shall be in addition to the amounts allowed as reductions in the value of a vehicle pursuant to K.S.A. 79-5105(a).

(b) The method of computing depreciation set forth in subsection (a) shall be applied to all motor vehicles which are registered after January 1, 1991. (Authorized by K.S.A. 79-5115; implementing K.S.A. 79-5105; effective, T-92-10-1-90, Jan. 1, 1991; amended, T-92-4-25-91, April 25, 1991, effective June 10, 1991.)

92-55-3. Application for refund of motor vehicle tax; county officer's duties; refund of registration fees; credit of refund against other motor vehicle tax; application form. When the owner disposes of and transfers title to a motor vehicle on which the motor vehicle tax has been paid and replaces it with a replacement motor vehicle, and such transaction results in a refund, application for any such refund shall be made to the county in which the replacement motor vehicle is registered. When the owner disposes of and transfers title to a motor vehicle on which the motor vehicle tax has been paid and does not replace it with a replacement motor vehicle, ap-

plication for refund shall be made to the county in which the motor vehicle was registered.

It shall be the duty of the county appraiser to prepare the application for refund of motor vehicle tax paid upon a motor vehicle being replaced by the owner thereof with a replacement motor vehicle. It shall be the responsibility of the owner of such motor vehicle being replaced to present the county appraiser with proof that such motor vehicle was registered and that the motor vehicle tax was paid.

It shall be the duty of the county clerk to prepare the application for refund of the motor vehicle tax paid upon a motor vehicle, disposed of and whose title was transferred, for which the owner does not acquire a replacement motor vehicle. Except as otherwise provided herein, the claimant of any refund of the motor vehicle tax paid upon a motor vehicle, disposed of and whose title is transferred, for which no replacement vehicle is acquired, shall relinquish to the county clerk the claimant's copy of the registration receipt and the vehicle registration plate for the motor vehicle as a condition precedent to payment of the refund. Refunds of any portion of the registration fee for a motor vehicle, disposed of and whose title is transferred, for which no replacement vehicle is acquired, shall not be made except as otherwise specifically provided by K.S.A. 1980 Supp. 8-143. The registration receipt and vehicle registration plate for a motor vehicle for which a portion of the registration fee may be refunded pursuant to K.S.A. 1980 Supp. 8-143 shall be relinquished directly to the county treasurer as a condition precedent to payment of the motor vehicle tax refund. The county treasurer shall notify the county clerk that the receipt and plate were relinquished.

Whenever the owner of a motor vehicle is eligible for a refund of the motor vehicle tax from the owner's county of residence, the county, instead of making the refund, may credit the amount of the refund against the motor vehicle tax imposed against any motor vehicle being registered by the owner which does not qualify as a replacement motor vehicle solely because the registration plates cannot be transferred thereto. The claimant shall relinquish to the county appraiser the claimant's copy of the registration receipt and the vehicle registration plate for the motor vehicle on which motor vehicle tax was paid as a condition precedent to receipt of the credit.

Application for refunds of motor vehicle tax

shall be made upon forms prescribed by the department of revenue signed by the refund claimant. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5107; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

92-55-4. Refunds not authorized when motor vehicle is placed on the personal property tax rolls; personal property tax valuation.

If, for any reason, a motor vehicle which was previously subject to the motor vehicle tax is placed on the personal property tax rolls, the owner of the motor vehicle shall not be entitled to a refund of any motor vehicle tax previously paid on the motor vehicle. When any such motor vehicle is placed on the personal property tax rolls, the appraised valuation of the motor vehicle for general personal property tax purposes shall be computed in accordance with the following formula:

$$AV = MV \times (12 - MVTM)$$

where: AV = Appraised valuation of the motor vehicle
 MV = Monthly value of the motor vehicle as determined under K.S.A. 1980 Supp. 79-306d
 MVTM = Months in the calendar year for which motor vehicle tax has been paid.

(Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-306d, 79-5107; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

92-55-5. Motor vehicles of motor vehicle dealers. For the purpose of taxation under the provisions of article 51 of chapter 79 of the Kansas Statutes Annotated, a motor vehicle of a motor vehicle dealer shall not be deemed to be included within the inventory of the motor vehicle dealer if application is made for registration of the motor vehicle. The motor vehicle tax shall be due and payable upon a motor vehicle of a motor vehicle dealer at the time application is made for registration of the motor vehicle. The motor vehicle dealer shall be entitled to a refund of the motor vehicle tax pursuant to K.S.A. 1980 Supp. 79-5107 upon the disposition of and transfer of title to the motor vehicle. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5102, 79-5105, 79-5106, 79-5107; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

92-55-6. Insufficient or no-fund check; collection of motor vehicle tax; combined remittance for tax and registration fee. Whenever a check, received as payment of the motor

vehicle tax is returned to the county treasurer unpaid, it shall be the responsibility of the county to collect the motor vehicle tax. The registration of any motor vehicle on which the motor vehicle tax has been paid by check which subsequently is returned unpaid shall be invalid. In the event the county is unable to collect the motor vehicle tax after exhausting all of its remedies, the county treasurer shall notify the division of vehicles of the department of revenue thereof providing such information as the director of vehicles shall require.

Application for registration of a motor vehicle subject to the motor vehicle tax may be refused when the owner of the motor vehicle makes a combined remittance by personal check for payment of both the motor vehicle tax and the registration fee. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5105, 79-5106; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

92-55-7. Distribution of tax receipts to taxing subdivisions. Moneys allocated to tax levy units and distributed in the year 1981 pursuant to K.S.A. 1980 Supp. 79-5109 shall be distributed among the state and each taxing subdivision levying taxes against tangible property within such unit in the proportion that the general ad valorem tax levies made in the year 1980 by the state and each taxing subdivision within such unit for use and expenditure in the year 1981 bear to the sum of all such tax levies made in the year 1980 by the state and all such taxing subdivisions within the unit for use and expenditure in the year 1981. Moneys allocated to tax levy units and distributed in any year following 1981 pursuant to K.S.A. 1980 Supp. 79-5109 shall be distributed among the state and each taxing subdivision levying taxes against tangible property within such unit in the proportion that the general ad valorem tax levies made in the year immediately preceding the year in which such moneys are distributed by the state and each taxing subdivision within such unit bear to the sum of all such tax levies made in the year immediately preceding the year in which such moneys are distributed by the state and all the taxing subdivisions within the unit.

Estimates of total general ad valorem property taxes which could have been levied by new taxing subdivisions or taxing subdivisions making no general ad valorem tax levies during a year, made for purposes of distributing moneys thereto pursuant to K.S.A. 1980 Supp. 79-5109, shall be limited to

an amount that could have been levied under such taxing subdivisions' maximum levy authority or the amount of taxes that would have been required to be levied to entirely finance such taxing subdivisions' budgets in the year such moneys are being distributed, whichever amount is the lesser. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5109; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

92-55-8. Apportionment of tax receipts among tax levy funds. Moneys received by a taxing subdivision in the year 1981 from motor vehicle taxes shall be apportioned pursuant to K.S.A. 1980 Supp. 79-5110 to each tangible property tax fund of the taxing subdivision in the proportion that the amount levied for each such fund in the year 1980 for use and expenditure in the year 1981 bears to the total levied by such taxing subdivision for all such funds in the year 1981. Moneys received by a taxing subdivision in any year following 1981 from motor vehicle taxes shall be apportioned pursuant to K.S.A. 1980 Supp. 79-5110 to each tangible property tax fund of the taxing subdivision in the proportion that the amount levied for each such fund in the year immediately preceding the year in which such moneys are received bears to the total levied by such taxing subdivisions for all such funds in the year immediately preceding the year in which such moneys are received. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5110; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

92-55-9. Allocation of estimated tax receipts in budget preparation. For the purpose of preparing the 1982 budget in the year 1981, the amount estimated to be received by any taxing subdivision from motor vehicle tax receipts pursuant to K.S.A. 1980 Supp. 79-5111 shall be apportioned among the general ad valorem tax funds of such subdivision in the proportion that the amount levied for each such fund in the year 1980 for use and expenditure in the year 1981 bears to the total amount levied for all such funds in the year 1980 for use and expenditure in the year 1981. For the purpose of preparing the budget for any year following 1982, the amount estimated to be received by any taxing subdivision from motor vehicle tax receipts pursuant to K.S.A. 1980 Supp. 79-5111 shall be apportioned among the general ad valorem tax funds of such subdivision in the proportion that the amount levied for each such

fund in the year immediately preceding the year in which such budget is being prepared bears to the total amount levied for all such funds in the year immediately preceding the year in which such budget is being prepared.

Estimated motor vehicle tax receipts shall not be apportioned to a tax levy fund of the taxing subdivision for which no taxes were levied in the year immediately preceding the year in which the budget is being prepared or to a tax levy fund being discontinued in the year for which the budget is prepared. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5111; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

92-55-10. Motor vehicles registered in more than one (1) state. Any motor vehicle which is required by law to be registered in this state and in another state, shall not be taxed under the provisions of article 51 of chapter 79 of the Kansas Statutes Annotated if the vehicle has a permanent situs in such other state and such vehicle is, in fact, being subjected to ad valorem property taxation in that state. Upon making application for registration in this state, the owner of the motor vehicle shall present to the county treasurer proof that the motor vehicle is being assessed in such other state for ad valorem property taxation and an affidavit which shall contain the following information: A statement that the person is the owner of the motor vehicle for which application for registration is being made; the residence of such person; the name of the other state in which the motor vehicle is required to be registered; a statement that the vehicle has a permanent situs in such other state; and a statement that the vehicle is subject to ad valorem taxation in such other state. The motor vehicle tax shall not be imposed upon any motor vehicle registered in this state for which the affidavit and proof of assessment have been submitted to the county treasurer of the county in which the vehicle is being registered. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5102, 79-5106; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

Article 56.—IGNITION INTERLOCK DEVICES

92-56-1. Ignition interlock device, definitions. As used in these regulations, the following terms shall have these meanings: (a) "Ignition

interlock device” and “device” mean an electronic device using microcomputer logic and internal memory and having a breath alcohol analyzer as a major component that interconnects with the ignition and other control systems of a motor vehicle. This device measures the breath alcohol concentration (BrAC) of an intended driver to prevent the motor vehicle from being started if the BrAC exceeds a preset limit and to deter and record attempts to circumvent or tamper with the device.

(b) “Alcohol setpoint” means the breath alcohol concentration at which the ignition interlock device is set to lock the ignition. The alcohol setpoint is the normal lockpoint at which the ignition interlock device is set at the time of calibration. The alcohol setpoint for retests shall be set at .06 as a safety factor to preclude a false positive test result during the operation of the vehicle.

(c) “BrAC” means the breath alcohol concentration expressed in percent by weight by volume based upon grams of alcohol per 210 liters of breath.

(d) “BrAC fail” means the condition in which the ignition interlock device registers a BrAC value in excess of the alcohol setpoint limit when the intended driver conducts an initial test or retest. This condition is recorded as a violation.

(e) “Breath sample” means the sample of alveolar or end-expiratory breath that is analyzed for the analysis of alcohol content after the expiration of a minimum of 1.2 liters of air.

(f) “Circumvention” means an overt, conscious attempt to bypass the ignition interlock device by any of the following:

(1) Providing samples other than the natural, unfiltered breath of the driver;

(2) starting the vehicle without using the ignition switch; or

(3) performing any other act intended to start the vehicle without first taking and passing a breath test. Circumvention permits a driver with a BrAC in excess of the alcohol setpoint to start the vehicle.

(g) “Emergency bypass switch” means the switch that allows the driver to bypass the ignition interlock device in case of an emergency or failure of the device and that places the ignition interlock device in a run state mode so that no test is required when the ignition switch is turned on. The bypass switch can be used only once. If used, the event shall be recorded in the event log, and the device shall be put into early service status.

(h) “Fail-safe” means a condition in which the ignition interlock device cannot operate properly due to a problem, including improper voltage and a dead sensor. In a fail-safe condition, the ignition interlock device will not permit the vehicle to be started.

(i) “Lockout” means an instance in which the ignition interlock device will prevent the vehicle from starting. The vehicle cannot be operated until serviced by the service provider.

(j) “Rolling retest” means a subsequent breath test that must be conducted according to the preset conditions of the ignition interlock device for a fixed time period and must be completed while the motor vehicle is in operation. Failure to execute a valid retest will cause the vehicle ignition system to enter a lockout condition after a fixed time period.

(k) “Violation” means either of the following:

(1) The driver has blown a high BrAC and fails the initial breath test when attempting to start the vehicle.

(2) The driver fails a breath test within the allowable time after a retest has been requested. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002.)

92-56-2. Ignition interlock device; certification and standards. (a) Each manufacturer of an ignition interlock device desiring to market the device in this state shall apply to the division of vehicles for certification of the device and submit the following information:

(1) The name and address of the manufacturer;

(2) the name and model number of the device;

(3) certification that the device meets the following criteria:

(A) Offers safe operation of the vehicle in which installed, works reliably and accurately in an unsupervised environment, and, when in a fail-safe condition, prevents the vehicle from starting;

(B) offers protection against tampering and is able to detect and be resistant to circumvention;

(C) allows for a free restart of the vehicle’s ignition within two minutes after the ignition has been turned off without requiring another breath test if the driver has not registered a BrAC fail or is not in the process of completing a retest;

(D) allows for a rolling retest of a subsequent breath test after the vehicle has been in operation;

(E) disables the ignition system if the BrAC of the person using the device exceeds the alcohol setpoint of .04;

(F) contains an emergency bypass switch;
 (G) records each time the vehicle is started, the duration of the vehicle's operation, and any instances of tampering or attempts to tamper with the device;

(H) displays to the driver all of the following:

(i) When the device is on;

(ii) when the device has enabled the ignition system;

(iii) when a BrAC fail condition has occurred, along with the BrAC reading that caused the failure; and

(iv) the date that a lockout will occur; and

(I) alerts the driver with a three-minute warning light or tone that a rolling retest is required;

(4) a list of ignition interlock device service providers and the address where the device can be obtained, repaired, replaced, or serviced 24 hours a day by calling a toll-free phone number. Service providers shall be located within 100 miles of all Kansas residents. Manufacturers shall be responsible for the quality of service provided by their service providers; and

(5) the name of an insurance carrier authorized to do business in this state that has committed to issue a liability insurance policy for the manufacturer in the amounts specified in K.A.R. 92-56-3.

(b) Each certification issued by the division shall continue in effect for three years unless either of the following occurs:

(1) The manufacturer requests in writing that the certification be discontinued.

(2) The division informs the manufacturer in writing that the certification is suspended or revoked.

(c) If a manufacturer modifies a certified device, the manufacturer shall notify the division of the exact nature of the modification. A device may be required by the division to be recertified at any time.

(d) Each manufacturer of a certified device shall notify the division of the failure of any device to function as designed. The manufacturer shall provide an explanation for the failure and shall identify the actions taken by the manufacturer to correct the malfunctions.

(e) Each manufacturer of a certified device shall accumulate a credit of at least two percent of the gross revenues attributed to installation, maintenance, calibration, and removal of ignition interlock devices in Kansas. Any existing credit shall be made available to people who are restricted to operating a vehicle with an ignition in-

terlock device and who are indigent as evidenced by eligibility for the federal food stamp program. The amount of the credit available shall be limited to the amount of the existing credit balance.

(f) Each manufacturer of a certified device shall submit a report to the division by January 31 of each year with the following information for the previous calendar year's activities:

(1) The number of ignition interlock devices initially installed on vehicles for Kansas drivers who were restricted to driving only with an ignition interlock device;

(2) the number of vehicles that had devices removed due to failures and, for each vehicle, the driver's name, the driver's license number, the specific failure or operational problem that occurred during the period installed, and the resolution of each situation; and

(3) a chronological accounting summary of the following information:

(A) The beginning credit balance;

(B) two percent of the gross revenues attributable to installation, maintenance, calibration, and removal of ignition interlock devices;

(C) amounts credited to indigent drivers; and

(D) the ending credit balance. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002.)

92-56-3. Insurance; policy limits. (a) Each manufacturer submitting an application for certification of an ignition interlock device shall obtain a policy of product liability insurance from a carrier authorized to do business in the state of Kansas. The insurance policy shall contain minimum liability limits of \$1,000,000 per occurrence with an aggregate coverage of \$3,000,000. The insurance policy shall cover all liability arising from defects in design and materials, including the manufacture of the device, its calibration, maintenance, installation, and removal.

(b) Each insurance carrier shall provide 30-day notice to the division before canceling any insurance policy.

(c) The cancelation of insurance coverage by a carrier shall be a basis for revoking the certification for the device. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002.)

92-56-4. Installation, inspection, and calibration standards. (a) Each ignition interlock device installed at the direction of the divi-

sion shall be done at the driver's own expense, except as allowed by K.A.R. 92-56-2(e).

(b) Each service provider shall meet the following requirements:

(1) Install each device in accordance with the manufacturer's instructions. Each service provider shall, within two weeks of installation, inform the division each time a device has been installed;

(2) install each device so that the device will be deactivated if the driver has a BrAC of .04 or higher until a successful retest occurs;

(3) set each device so that if the driver fails an ignition interlock test, a retest cannot be done for 15 minutes;

(4) set each device so that a rolling retest will occur after the vehicle has been in operation for 10 minutes. Subsequent rolling retests shall occur at 30-minute intervals. A three-minute warning light or tone shall be set to come on to alert the driver that a retest is coming. The driver shall have five minutes to complete the retest. The free restart shall not be operative when the device is waiting for a rolling retest sample;

(5) calibrate each device at least every 60 days at the driver's own expense, except as allowed by K.A.R. 92-56-2(e), and maintain an inspection and calibration record with the following information:

(A) The name of the person performing the calibration;

(B) the date of the inspection and calibration;

(C) the method by which the calibration was performed;

(D) the name and model number of the device calibrated;

(E) a description of the vehicle in which the device is installed, including the license plate number, make, model, year, and color; and

(F) a statement by the installer indicating whether there is any evidence that attempts have been made to circumvent the device; and

(6) set each device so that a lockout will occur

seven days after any of the following events occurs:

(A) The 60-day calibration and service requirement has been reached;

(B) five or more violations are recorded;

(C) the emergency bypass switch has been used;

(D) a hardware failure or evidence of tampering is recorded; or

(E) the events log has exceeded 90 percent of capacity.

(c) Each driver restricted to driving a vehicle equipped with an ignition interlock device shall keep a copy of the inspection and calibration records in the vehicle at all times. The manufacturer shall retain the original record for each current driver for a period of one year after the device is removed. The manufacturer shall notify the division within seven days after a device has been serviced due to a lockout that occurred for any of the reasons specified in paragraph (b)(6)(B), (b)(6)(C), or (b)(6)(D) of this regulation. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002.)

92-56-5. Revocation of certification. A certification for any ignition interlock device may be revoked for any of the following reasons:

(a) The device fails to comply with specifications or requirements provided by the division.

(b) The policy of product liability insurance required by K.A.R. 92-56-3 is canceled or not renewed.

(c) The manufacturer has failed to make adequate provisions for the installation, maintenance, inspection, calibration, repair, and removal of the device.

(d) The manufacturer has failed to provide statewide service network coverage or 24-hour, seven-day service support.

(e) The manufacturer is no longer in the business of manufacturing ignition interlock devices. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002.)