

Notice

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Brief Description: Sales Taxation of Broadcasters and Subscriber Radio and Television Services
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Body:

NOTICE 98-04 **Sales Taxation of Broadcasters and Subscriber Radio and Television Services**

1998 Senate Bill No. 493 contains a new sales tax exemption for over-the-air, free-access radio and television stations. When the exemption becomes law on July 1, 1998, the Kansas sales tax act will contain four subsections that specifically address the taxation of radio and television broadcast stations and subscriber radio and television services. This notice will discuss those four provisions and the general obligations that the sales tax act places on Kansas broadcast stations, cable services, and other subscriber radio and television services.

A. THE KANSAS STATUTES.

The Kansas retailers' sales tax act specifies that sales tax is imposed on:

the gross receipts from cable, community antennae and other subscriber radio and television services. *K.S.A. 79-3603(k)*.

Effective July 1, 1998, the act exempts:

- 1) except as otherwise provided in this act, all sales of services rendered by an advertising agency or licensed broadcast station or any member, agent or employee thereof. *K.S.A. 79-3606(nn)*.
- 2) all sales of tangible personal property and services purchased by a public broadcasting station licensed by the federal communications commission as a noncommercial educational television or radio station. *K.S.A. 79-3606(ss)*.
- 3) all sales of machinery and equipment purchased by over-the-air, free access radio or television station which is used directly and primarily for the purpose of producing a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. For purposes of this subsection, machinery and equipment shall include, but not be limited to, that required by rules and regulations of the federal communications commission, and all sales of electricity which are essential or necessary for the purpose of producing a broadcast signal or is such that the failure of the electricity would cause broadcasting to cease. *K.S.A. 79-3606(zz)(new enactment)*.

B. SUBSCRIBER RADIO AND TELEVISION SERVICES.

1. "Subscriber radio and television service" means any business that, for a fee, regularly amplifies and transmits by wire, coaxial cable, light wave, radio wave, or microwave, simultaneously to multiple subscribers, programs broadcast by television or radio stations or originated by themselves or other parties. These services include digital satellite radio and television services. A subscriber radio and television service does not include a master antenna system that serves one residential, commercial, or government building, or a complex of buildings under common ownership, if that service does not provide any broadcast signals other than those that may be viewed in that facility.
2. Subscriber radio and television services are consumers of equipment, materials and supplies used to conduct their business and shall pay sales or use tax on purchases of this tangible personal property. This includes tuners and any other equipment that is placed in the home or business of the subscriber. *In re Tax Appeal of AT & T Technologies*, 242 Kan. 554, 749 P.2d 1033 (1988); *Southwestern Bell Tel. Co. v. State Commissioner of Revenue & Taxation*, 168 Kan. 227, 212 P.2d 363 (1949).

3. Electricity purchased by a subscriber radio and television service for use in its amplification process and in sending its signals over its lines or producing its broadcast signal is exempt from sales tax as consumed in production of a taxable service.
4. Hotel purchases of subscriber radio and television service are generally subject to sales tax. However, a hotel may claim exemption for purchases of special programming when charges for such programming are re-billed to hotel patrons as a separate line item charge that is subject to sales tax. *K.A.R. 92-19-24*.
5. Subscriber radio and television services are required to charge and collect state and local sales tax on the total amount they receive from the sale of their services. This means that the tax base, which is the sum that is multiplied by the state and local tax rates to arrive at the amount of tax due, shall include all franchise fees that the subscriber service is obligated to pay, even when the franchise fee is stated as a separate line item on a customer billings. *In re Atchison Cablevision*, 262 Kan. 231, 936 P.2d 721 (1997).
6. Federal law prohibits local governments from imposing sales tax on sales of digital satellite television and radio services to the end user. *Telecommunications Act of 1996*, P.L. 104-104, Title VI, Sec. 602; 47 USCA Sec. 152n (1998 Supp.). Businesses that provide digital satellite television transmissions to homes and businesses shall collect Kansas state sales tax, but not local sales tax, on the services they provide.

C. NONCOMMERCIAL EDUCATIONAL TELEVISION AND RADIO STATIONS--- PUBLIC BROADCASTING STATIONS.

1. Kansas sales tax law exempts all sales of tangible personal property and services to a public broadcasting station that is licensed by the federal communications commission as a noncommercial educational television or radio station. To claim this exemption, public broadcasting stations must provide their vendors with completed exemption certificates, as discussed in *K.A.R. 92-19-25b*.
2. Public broadcasting stations may claim exemption when purchasing items that will be given away as part of their fund raising activities. When a merchant removes an item from their resale inventory and donates it to a station for use in the station's fund raising activities, the merchant shall accrue sales tax on the cost that he or she paid on the item that is removed from inventory.

D. OVER-THE-AIR, FREE ACCESS RADIO AND TELEVISION STATIONS.

1. The 1998 Kansas legislature enacted a sales tax exemption for certain purchases by over-the-air, free-access radio and television broadcasters. The new exemption is limited to machinery and equipment that is directly and primarily used to produce a broadcast signal or whose failure would cause broadcasting to cease. As used hereafter, "equipment" will mean both machinery and equipment.
2. The Federal Communications Act defines "broadcasting" to mean: "the dissemination of radio communication intended to be received by the public." *47 U.S.C.A. Sec. 153(6) (1998 Supp.)*. The Act defines "radio communication" to include the transmission of "writing, signs, signals, pictures, and sounds of all kinds." *47 U.S.C.A. Sec. 153(33) (1998 Supp.)*. Similarly, *Webster's* defines "signal" as "the sound or image conveyed in . . . radio . . . or television." Accordingly, the scope of the new exemption is not limited to the transmitter and broadcast antenna equipment but includes electronic equipment that produces the initial electronic signal from the broadcast source and the equipment that is used to modify and amplify that signal before it is fed into the transmitter.
3. To qualify for this exemption, a radio or television broadcasting station must be licensed by the federal communication commission to transmit radio waves that are primarily intended to be received by the general public and are made at an assigned frequency in the frequency bands that are reserved for AM, FM, and television broadcasting. Subscriber radio and television services, amateur stations, short wave radio operators, and any other radio operations that are not licensed by the FCC as AM or FM broadcasters, do not qualify for this exemption. Public radio and television stations are exempted under a separate provision in the law, as discussed above in subsection C.
4. With few exceptions, the new law's direct use requirement limits the exemption to electronic equipment that: (a) is used to produce audio or video signals from a live source or from transcribed material; and, (b) modifies and amplifies those signals, and then broadcasts them to the general public without charge. In addition to the direct use requirement, the exempt use must be the equipment's primarily use. This means that when equipment has multiple uses, 50% or more of it's use must be for an exempt purpose.
5. Exempt equipment shall include, but is not limited to: (a) input source equipment, including satellite receiving dishes, video tape players, television cameras, digital disc players, audio tape players, turntables, and microphones, and all the electronic equipment and transmission cable that is located in the electronic circuit that links the input

source equipment to the point at which the broadcast signal is transmitted by the broadcast antenna system; (b) computers that render on-air graphics; (c) special cooling systems for exempt equipment; (d) equipment required by rules and regulations of the federal communications commission; (e) set lighting necessary for live television broadcasting; (f) transmission towers; (g) backup power supplies and generators; and (h) digital equipment, including computers, that is purchased to comply with upcoming FCC guidelines for digital radio and television broadcasting. Replacement parts for such equipment shall be presumed to qualify for exemption. A non-exclusive list of items that shall be presumed to qualify as machinery and equipment that is used directly and primarily in producing a broadcast signal or whose failure would cause broadcasting to cease is set forth in Appendix A.

6. Sales to broadcasters of equipment, supplies and materials that are not specifically exempted by the new law remains subject to sales and use tax. This includes sales of raw or unprocessed magnetic tape, recorded magnetic tape, and other transcriptions, except when the transcription contains copyrighted material that is transferred under a lease or contract that grants broadcasting rights as a license to use. Taxable sales include, but are not limited to, sales of office supplies, such as paper, typewriter ribbons, tape, pens, and pencils; sales of hand tools, such as screwdrivers, wrenches, and soldering guns, and electronic testing equipment, such as multimeters, that are used to repair or service exempt or non-exempt equipment; sales of office equipment, such as desks, chairs, computers, fax machines, billing machines, file cabinets, and office lighting equipment; sales of building materials and supplies, such as soundproofing materials, set materials, building lighting, plumbing fixtures, and wiring; sales of props and other stage property; and sales of production equipment and supplies, such as blank audio and video tape, and video tape recorders that are not primarily used by the station to generate program signals.

7. Electricity used to power the equipment, whose sale is exempt as discussed in paragraphs D-4 and D-5, is also exempt from state and local sales tax after June 30, 1998. The sale of electricity to broadcast stations for other uses remains taxable. Such taxable uses include, but are not limited to, electricity used in administrative offices, supply rooms, maintenance shops, storage warehouses, elevators, parking lots, building air conditioning and heating, general lighting, housekeeping equipment, safety equipment, cafeteria equipment, and appliances. When both taxable and exempt electricity use is metered through one meter, broadcasters shall complete department of revenue form BT/st-28B to claim exemption as an average percentage of the total metered use. When only exempt electricity is run through a meter, broadcasters shall issue an exemption certificate to their utility provider that claims exemption based on the meter location and number.

8. Broadcast rights are an intangible and a station's acquisition of the right to broadcast programming shall not be subject to sales tax, regardless of whether the programming is transferred on film, recorded magnetic tape, by satellite dish, or by other means. However, a broadcast station's acquisition of recordings and other transcriptions from retailers who do not grant broadcast rights as part of the sale is subject to tax.

9. A broadcaster's sale and purchase of commercials are exempted from sales tax by K.S.A. 79-3606(nn). Charges by broadcasters for air time and for the production of special programming are not subject to sales tax. The department has determined that equipment purchased by over-the-air, free-access radio and television broadcasters and used to produce delayed programming, special programming, advertising, and commercials, which they will be broadcast, shall be exempt from sales tax. However, supplies used for such production and programming shall be subject to tax.

10. A broadcast station that engages in over-the-air product advertising that directs the prospective purchaser to place an order by phone or letter to the station and to remit the purchase price to the station are considered to be retailers and must collect sales tax from the purchaser even though the station sends the order to out-of-state suppliers who make the actual deliveries to in-state purchasers. *Montgomery Ward & Co., Inc. v. Commission of Revenue and Taxation*, 156 Kan. 408, 133 P.2d 1008 (1943).

Taxpayer Assistance

If you have any questions about this notice, please contact a customer service representative in one of our offices:

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Docking State Office Building
915 SW Harrison St.

(785) 296-2461

Hearing Impaired TTY:

(785) 296-6461

Fax: (785) 291-3614

Overland Park

Cloverleaf Office park, Bldg. 3
6405 Metcalf Ave., Suite 120

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Wichita
State Office Building
230 E. William, Room 7150
(316) 337-6140
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APPENDIX A—This is a non-exclusive list of items that shall be presumed to qualify as machinery and equipment that is used directly to produce a broadcast signal or whose failure would cause broadcasting to cease; or that are required by FCC regulations:

- (1) Advertising insertion switching equipment
- (2) Antennas and supporting towers and guy wires
- (3) Audio amplifiers
- (4) Audio and video patch panels
- (5) Audio cart decks
- (6) Audio compressors
- (7) Audio generator
- (8) Audio mixer
- (9) Audio monitors
- (10) Audio-video cart machines
- (11) Audio-video demodulators
- (12) Audio-video distribution amplifiers
- (13) Audio-video FM demodulators
- (14) Audio-video FM modulators
- (15) Audio-video patch panels
- (16) Audio-visual frequency modulation demodulators
- (17) Audio-visual frequency modulation modulators
- (18) Audio-visual router
- (19) Audio-visual switchers
- (20) Automated assembly systems
- (21) Automated commercial insertion systems
- (22) Back-up power supply
- (23) Broadcast microphones
- (24) Broadcast tape players and DAT decks
- (25) Broadcast turntables and CD players
- (26) Computers that render on-air graphics
- (27) Cooling systems for exempt equipment
- (28) Dedicated STL phone lines
- (29) Distribution amplifiers
- (30) Edit controllers
- (31) Editing control units
- (32) Emergency audio override systems
- (33) Equipment cables and connectors
- (34) FM stereo transmission equipment
- (35) Frame synchronizers
- (36) Frequency modulation receiver
- (37) Frequency modulation transmitters
- (38) Frequency monitors
- (39) Frequency scopes
- (40) Insertion system and software
- (41) Level matching interface
- (42) Microwave receiver monitoring systems
- (43) Mixers
- (44) Mobile and cellular phones used primarily for direct, on-air broadcasts
- (45) Monitor/switching equipment
- (46) MTS stereo encoders
- (47) Non-linear editors
- (48) On-air computer graphic equipment
- (49) On-air computerized character generators
- (50) On-air digital audio/video effect equipment and paint boxes

- (51) On-air weather graphic equipment
 - (52) Phase correcting equipment
 - (53) Positive notch filters
 - (54) Positive traps
 - (55) Power conditioning equipment
 - (56) Power switching equipment
 - (57) Processing amplifiers
 - (58) Radio ground systems
 - (59) Remote broadcasting equipment contained in mobile units, not including the vehicle chassis
 - (60) Replacement parts for exempt equipment
 - (61) RF monitoring equipment
 - (62) Routing and switching equipment
 - (63) Satellite antenna controllers
 - (64) Satellite descramblers
 - (65) Satellite receiving and transmitting equipment
 - (66) Satellite receiving equipment
 - (67) Signal generators
 - (68) Signal integrity enhancement devices
 - (69) Signal modulators
 - (70) Signal processors
 - (71) Signal scrambling system
 - (72) Signal strength enhancement devices
 - (73) Stereo generators
 - (74) Stereo monitoring equipment
 - (75) Studio consoles and production interconnecting equipment
 - (76) Studio lighting systems and control panels
 - (77) Subcarrier demodulators
 - (78) Television cameras and related equipment
 - (79) Television monitors
 - (80) Time base correctors
 - (81) Transmission line pressurizing equipment
 - (82) Transmission lines
 - (83) Transmitters
 - (84) Transmitter automation and emergency equipment
 - (85) Transmitter cooling systems
 - (86) Tuner/signal switchers and video control switchers
 - (87) Video/synchronous generators
- Visual and audio monitoring equipment

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