**Opinion Letter**

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| **Letter Number:** | **O-2007-004** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Credit for sales taxes paid on a purchase in another state when item is later used in Kansas.** |
| **Keywords:** |  |
| **Approval Date:** | **08/09/2007** |

**Body:**

Office of Policy & Research

August 9, 2007

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RE: Your e-mail received on August 7, 2007

Dear XXXX:

I have been asked to answer your recent e-mail. In it, you ask if a credit is given for sales taxes paid on a purchase made in another state when the item is later used in Kansas. The answer is yes, a credit is given for taxes lawfully paid to the state of purchase. This credit is codified at K.S.A. 79-3704, which provides:

The provisions of this act shall not apply: . . .

(c) In respect to the use, storage or consumption of any article of tangible personal property the sale or use of which has already been subjected to a tax equal to or in excess of that imposed by this act whether under the laws of this state or of some other state of the United States. . . .

Under this provision, Kansas tax is owed on the difference between the combined Kansas state and local use tax rate and the lower combined state and local sales tax rate of the state where the purchase was made. The local tax rate required to be used is the one in place where the first use of the purchase is made in Kansas. If the combined state and local sales tax rate of the state of purchase is higher than the combined Kansas rate, no Kansas use tax is owed.

In the book *Sales Taxation-State and Local Structure and Administration*, Due and Mikesell 2nd Ed. 1994, the authors discuss the origins of this credit:

**Credit for Sales Taxes Paid to Other States**

Initially, most states did not give credit for sales tax that had been paid to another state, and therefore, there was potential double taxation. The principal difficulty arose with goods used by a business firm in one state and then transferred to another state. Inevitably, complaints were raised about this treatment, and some states began to provide a credit. The trend increased sharply in the mid-1960s as a result of a report and subsequent federal legislation proposed by a subcommittee of the U.S. House judiciary Committee, discussed latter in this chapter. As a consequence, credit is now given for sales tax paid other states with relatively few exceptions. . . . *(p. 248)*

Due and Mikesell go on to explain that some states provide a general credit while others provide a reciprocal credit based on whether or not the state of purchase provides a credit similar to the one their state provides. This treatment become much more complicated when applied to motor vehicles, because of the different tax treatment accorded by the states for vehicles sales, such as on leases *(e.g. payment up front or on the stream of payments),* vehicle re-titling, isolated sales, and vehicle registration. In addition, some states impose a different tax on vehicle sales than their sales tax.

Hopefully, this letter adequately answers your questions about the credit that Kansas extends for taxes lawfully paid in another state. If not, please call me and we can discuss this matter further.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 08/10/2007 Date Modified: 08/10/2007**