

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:25 A.M. on February 4, 2005 in Room 519-S of the Capitol.

All members were present except:

Representative Lana Gordon- excused

Committee staff present:

Chris Courtwright, Legislative Research Department

Martha Dorsey, Legislative Research Department

Gordon Self, Revisor of Statutes

Richard Cram, Department of Revenue

Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Secretary Wagnon, Department of Revenue

Others attending:

See attached list.

SB 23 - Sales tax calculation for isolated or occasional sale of motor vehicles; refunds; verification of selling price.

The Chairman opened the floor for continued discussions on **SB 23**. The Chairman explained the proper procedures for motions, substitute motions and motions to move the bill out.

Representative George distributed a balloon amendment to **SB 23** (Attachment 1). The balloon would add the following language in the second paragraph, after the first sentence, *The seller and purchaser shall each sign and present to the county treasurer or director of taxation the bill of sale and sworn, notarized affidavit stating the true and correct selling price of the motor vehicle or trailer and containing a warning to the seller and purchaser of the consequences of making false statements related thereto. Such bill of sale and affidavit shall be in a form promulgated by the director of taxation.* Representative George moved that his balloon be amended into SB 23. Representative Hill seconded the motion.

The Chairman requested that Secretary Wagnon explain "rules and regulations" for new members. She explained that most state agencies have general authority to promulgate rules and regulations to implement statutes. Agencies provide the procedural part of the policy decisions made by the Legislature. With rules and regulations authority, agencies must stay within the confines of the policy that is established in the statute. Regulations that agencies promulgate must flow from the statute. Any statutory derivation must go through a process in which the Department of Administration and the Attorney General check to ensure that it is related to the statute. It then it proceeds to the Rules and Regulations Committee for their approval. There is also a time for public comment and the entire procedure takes nine months.

Discussion followed regarding: merit of notarization of a bill of sale and the discontinuation of that process, criminal penalties currently in statutes, possible problems involving the use of a broker, redesign of title back to be used as a bill of sale, and the creation of a warning statement regarding the consequences of making false statements that would require the signature of the seller at county treasurers office.

Copies of a car title form were distributed (Attachment 2).

Representative Dillmore made a substitute motion to amend SB 23. The following language would be struck from Representative George's balloon. *The seller and purchaser shall each sign and present to the county treasurer or director of taxation the bill of sale and sworn, ~~notarized~~ affidavit stating the true and correct selling price of the motor vehicle or trailer and containing a warning to the seller and purchaser of the consequences of making false statements related thereto. Such bill of sale and affidavit shall be in a form promulgated by the director of taxation.* The motion was seconded by Representative Owens.

Following a technical suggestion from staff, Representative Dillmore was asked to state the intent of his substitute motion. He stated it was to eliminate the notarization and to require only the purchaser to sign the form. Staff suggested that the phrase *and sworn, notarized affidavit* be struck. After another minor suggestion,

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on February 4, 2005 in Room 519-S of the Capitol.

Representatives Dillmore and Owens agreed to allow the revisor the latitude to draft the entire intent of the substitute motion. The Chairman stated that he understood the intent of Representative Dillmore's substitute motion to be the purchasers shall sign and present to the County treasurer or to the Director of Taxation a statement specifying the true and correct selling price of the vehicle and containing a warning regarding the consequences of making false statements. Such a statement would be in a form promulgated by the Director.

After discussion, the Secretary suggested that it would cost approximately \$60,000 to reprint the current vehicle title form, making it a complete bill of sale that could be presented to the county treasurer.

Representative Dillmore closed and moved his substitute motion to **SB 23**. The motion carried.

Discussion followed regarding processes the Department could take when fraud is suspected. The Secretary stated that the Department did not need additional rules and regulations in order to carry out **SB 23** as amended.

Representative Kirk made a motion to amend **SB 23** and attach language to KSA 8-135 making it a requirement, like an odometer reading, for the seller to certify and fill in the purchase price and both the seller and buyer sign. The motion was seconded by Representative Carlin.

Representative Kirk closed and moved her amendment. The motion passed 12-7.

Representative Huff made the motion to move **SB 23**, as amended, favorably for passage. Representative Larkin seconded the motion.

Representative Hill made a substitute motion to reinstate the old regulation pertaining to issues when fraud was suspected. Language from the old regulation would be added to the bill. Representative Thull seconded the motion.

The Chairman spoke of the importance of passing the bill out of committee in order to bring it to the House in a timely way, which in his opinion was the desire of the public and most Representatives. To address the current subject matter he promised to get another bill that could be debated at another time.

Representative Hill withdrew his substitute motion.

Representative Brunk made a substitute motion to amend the language on page 12, line 16 to change the "6" to "12" months. Representative Goico seconded the motion. The motion failed 9-12.

Representative Owens expressed concern over the effect of a felony charge against people that perpetrate possible fraud. He questioned how the state planned to prove fraud charges when both the seller and the buyer agree to the price? In his opinion, **SB 23**, as written, had put the seller in a possible situation of being charged with felony. Although he wants to support the underling intent of the bill, unless the felony issue is resolved, he could not support the bill.

Secretary Wagnon responded that when both parties agree on the purchase price, there is nothing in the bill that would allow them to pursue any charges of fraud. The issue of a broker, can and will be addressed in rules and regulations by saying the seller is the sellers agent. There will not be any follow-up to check for accuracy of purchase price. The Department will process the title only with the information listed.

Representative Huff closed and moved his motion. The motion carried.

The meeting was adjourned at 11:40 a.m. The next meeting is February 8, 2005.

Sec. 2. K.S.A. 79-3604 is hereby amended to read as follows:
79-3604. The tax levied under the Kansas retailers' sales tax act shall be paid by the consumer or user to the retailer and it shall be the duty of each and every retailer in this state to collect from the consumer or user, the full amount of the tax imposed or an amount equal as nearly as possible or practicable to the average equivalent thereof. Such tax shall be a debt from the consumer or user to the retailer, when so added to the original purchase price, and shall be recoverable at law in the same manner as other debts, except that the tax levied on isolated or occasional sales of motor vehicles or trailers within the state and upon the sales of taxable tangible personal property or services when the director shall determine the same to be necessary as hereinafter provided shall be paid and collected as herein provided for.

The tax on such isolated or occasional sales shall be paid to the director of taxation by the purchaser of the motor vehicle or trailer or to the county treasurer upon application for certificate of registration or ownership. The seller and purchaser shall each sign and present to the county treasurer or director of taxation the bill of sale and sworn, notarized affidavit stating the true and correct selling price of the motor vehicle or trailer and containing a warning to the seller and purchaser of the consequences of making false statements related thereto. Such bill of sale and affidavit shall be in a form promulgated by the director of taxation. If payment is made to the director of taxation, the director shall issue a receipt therefor. If the sales tax is not paid to the director of taxation, the county treasurer ~~shall~~, upon application for certificate of registration or ownership, shall collect such sales tax payment from the applicant ~~and in addition thereto~~. The county treasurer shall charge the applicant a collection service fee of \$.50, and shall give the applicant a receipt showing the tax and fee paid in full. The county treasurer shall transmit monthly all such sales tax moneys collected to the director of taxation and shall place the fees collected in the special fund provided in K.S.A. 8-145 and amendments thereto, to

be used for the purpose of paying necessary extra help and expenses.

Whenever the director of taxation ~~shall-determine~~ determines that in the retail sale of any tangible personal property or services because of the nature of the operation of the business including the turnover of independent contractors, the lack of a place of business in which to display a registration certificate or keep records, the lack of adequate records or because such retailers are minors or transients there is a likelihood that the state will lose tax funds due to the difficulty of policing such business operations, it shall be the duty of the vendor to such person to collect the full amount of the tax imposed by this act and to make a return and payment of the tax to the director of taxation in like manner as that provided for the making of returns and the payment of taxes by retailers under the provisions of this act. The director shall notify the vendor or vendors to such retailer of the duty to collect and make a return and payment of the tax.

In the event the full amount of the tax provided by this act is not paid to the retailer by the consumer or user, the director of taxation may proceed directly against the consumer or user to collect the full amount of the tax due on the retail sale.

DO NOT ACCEPT TITLE SHOWING ANY ERASURES, WHITEOUT, ALTERATIONS OR MUTILATIONS

By affixing his or her signature seller assigns, transfers and conveys unto the purchaser(s) the vehicle described on this certificate of title and seller warrants same to be free from all liens and encumbrances except as stated on the assignment or reassignment. Federal and Kansas law requires that the seller state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment. Kansas resident must make application for title within 30 days of the date the vehicle was sold and delivered in the county treasurer's motor vehicle office where the vehicle will be garaged.

ASSIGNMENT OF TITLE	The undersigned hereby certifies that the vehicle described in this title has been transferred to the following printed name and address: Name of Purchaser(s) _____ Address _____ City _____ State _____ ZIP _____ Lienholder or Secured Party _____ Address _____	Vehicle was sold and delivered on: (Seller MUST record the date.) _____ Month _____ Day _____ Year I/we, the undersigned hereby swear or affirm that I/we am/are the seller of the motor vehicle described herein and that the information provided in this title assignment is true and correct to the best of my/our belief. I/we am/are aware that the law provides severe penalties for making false statements under oath.
	I, seller(s), certify to the best of my knowledge that the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked: <input type="checkbox"/> The mileage stated is in excess of the mechanical limits of the odometer. ODOMETER READING (No Tenths) <input type="checkbox"/> The odometer reading is not actual mileage. WARNING-ODOMETER DISCREPANCY. I, buyer(s), am aware of the odometer certification made by seller(s).	Buyer(s) Signature (Authorized Agent, if Dealership) _____ Buyer's Hand Printed Name (Same Person(s) that Signed Above.) _____ PURCHASE PRICE of the vehicle was: \$ _____
	Buyer's Signature (Authorized Agent, if Dealership) _____ Seller Signature (If Dealership, Authorized Agent) _____ Seller's Hand Printed Name (Same Person(s) that Signed Above.) _____ Dealer Number, if applicable _____	
FIRST RE-ASSIGNMENT BY LICENSED DEALER	The undersigned hereby certifies that the vehicle described in this title has been transferred to the following printed name and address: Name of Purchaser(s) _____ Address _____ City _____ State _____ ZIP _____ Lienholder or Secured Party _____ Address _____	Vehicle was sold and delivered on: (Seller MUST record the date.) _____ Month _____ Day _____ Year I, the undersigned, hereby swear or affirm that I am the seller of the motor vehicle described herein and that the information provided in this title reassignment is true and correct to the best of my belief. I am aware that the law provides severe penalties for making false statements under oath.
	I, seller(s), certify to the best of my knowledge that the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked: <input type="checkbox"/> The mileage stated is in excess of the mechanical limits of the odometer. ODOMETER READING (No Tenths) <input type="checkbox"/> The odometer reading is not actual mileage. WARNING-ODOMETER DISCREPANCY. I, buyer(s), am aware of the odometer certification made by seller(s).	Buyer's Signature (Authorized Agent, if Dealership) _____ Buyer's Hand Printed Name (Same Person(s) that Signed Above.) _____ PURCHASE PRICE (Retail Sale ONLY) \$ _____
	Seller Signature (Authorized Agent of Dealership) _____ Seller's Hand Printed Name (Same Person(s) that Signed Above.) _____ Dealership's Name (Print or Type) _____ Dealer Number _____	
SECOND RE-ASSIGNMENT BY LICENSED DEALER	The undersigned hereby certifies that the vehicle described in this title has been transferred to the following printed name and address: Name of Purchaser(s) _____ Address _____ City _____ State _____ ZIP _____ Lienholder or Secured Party _____ Address _____	Vehicle was sold and delivered on: (Seller MUST record the date.) _____ Month _____ Day _____ Year I, the undersigned, hereby swear or affirm that I am the seller of the motor vehicle described herein and that the information provided in this title reassignment is true and correct to the best of my belief. I am aware that the law provides severe penalties for making false statements under oath.
	I, seller(s), certify to the best of my knowledge that the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked: <input type="checkbox"/> The mileage stated is in excess of the mechanical limits of the odometer. ODOMETER READING (No Tenths) <input type="checkbox"/> The odometer reading is not actual mileage. WARNING-ODOMETER DISCREPANCY. I, buyer(s), am aware of the odometer certification made by seller(s).	Buyer's Signature (Authorized Agent, if Dealership) _____ Buyer's Hand Printed Name (Same Person(s) that Signed Above.) _____ PURCHASE PRICE (Retail Sale ONLY) \$ _____
	Seller Signature (Authorized Agent of Dealership) _____ Seller's Hand Printed Name (Same Person(s) that Signed Above.) _____ Dealership's Name (Print or Type) _____ Dealer Number _____	

If application for Kansas title and registration is not made within 30 days of date the vehicle was sold and delivered, penalty and interest will be assessed
Only One Additional Dealer Re-Assignment May be Attached

Reverse will require instead of new language on title that - attached

His Taxation Committee
 February 4, 2005
 Attachment 2

KANSAS DEPARTMENT OF REVENUE

DIVISION OF TAXATION

TOPEKA, KANSAS 66625

To: Director of Taxation

The undersigned certifies that on the date indicated below purchase was made of the following described motor vehicle and that the Kansas state and local retail sales tax has not been paid on said vehicle. Said tax is hereby reported.

County Name: SHAWNEE

County Treasurer: WILLIAM E. O'BRIEN

Vehicle Year: 2002 Make: BUIC I.D. No. 2G4WS52J321117369 Body Style: 4D

Purchased From: DOE JAMES
Address: RR 1

City: OVERLAND PARK State: KS Zip: 66202-

Tax Type: ISOLATED

Purchase Date: 01/02/2005
Registration Date: 01/13/2005

Gross Purchase Price	\$2,500.00
Less Trade-In	\$.00
Cash Difference	\$2,500.00
Add Transportation Cost	\$.00
Net Purchase Price	\$2,500.00
State Sales Tax Amount	\$132.50
State Tax Already Paid	\$.00
State Sales Tax Due	\$132.50
County Sales Tax Amount	\$27.50
County Tax Already Paid	\$.00
County Sales Tax Due	\$27.50
City Sales Tax Amount	\$28.12
City Tax Already Paid	\$.00
City Sales Tax Due	\$28.12
Total Sales Tax Due	\$188.12
County Collection Fee	\$.50
Total Amount Due	\$188.62

Purchasers'
Signature _____

Purchaser: DOE JOHN
Address: 123 ANY STREER

City: TOPEKA

State: KS Zip: 66605-

Transaction No. 106100200501130001 Prepared By: RVT
Receipt No. 1061TX200501130001

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 dealers 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 paragraph (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 par-

ties 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 ve-

hicle 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.

(1)(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.
May 1

92-
effecti
1979;

92-
imple
1979;
1998.

92
crow
Pursu
there
curity
issue
for se
fails
30 da
lstrat
of ta
may

(b
of a
(1
a pe
lcate
eith
To
in v
den
ceiv
rete
who
pri
tifi
(
car
wit
ho
int
wh
be
un
wi
in
ob
ac
to
cu