

Notice

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Tax Type: Kansas Retailers' Sales Tax
Brief Description: ATV & Work-Site Utility Vehicle Update
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NOTE: Underlying law may have changed. See Revenue Notice 19-04 concerning nexus.

Body:

KANSAS DEPARTMENT OF REVENUE

NOTICE 07-01 ATV & WORK-SITE UTILITY VEHICLE UPDATE

Recently, the Kansas Department of Revenue met with members of the Kansas Automobile Dealers' Association who are in the business of retailing All Terrain Vehicles (ATVs) and Work-site Utility Vehicles. In response to concerns raised by said dealers it was decided to develop and distribute this NOTICE which reviews the existing law regarding the sale of ATVs and Work-Site Utility Vehicles within the state of Kansas:

1. SALE OF ALL-TERRAIN VEHICLES (ATVs) DO NOT qualify for the Kansas Sales Tax "Farm Machinery and Equipment Exemption"

All-terrain vehicles **do not** qualify for the "farm machinery and equipment" sales tax exemption. Thus, all farmers, ranchers and others engaged in the business of agriculture may not purchase an ATV exempt from sales tax. Additionally all parts and labor for ATVs do not qualify for the "farm machinery and equipment" sales tax exemption. The definition of an "all-terrain vehicle" is:

"All-terrain vehicle" means any motorized nonhighway vehicle 48 inches or less in width, having a dry weight of 1,000 pounds or less, traveling on three or more low-pressure tires, **having a seat designed to be straddled by the operator**. As used in this subsection, low-pressure tire means any pneumatic tire six inches or more in width, designed for use on wheels with rim diameter of 12 inches or less, and utilizing an operating pressure of 10 pounds per square inch or less as recommended by the vehicle manufacturer. (Emphasis added). K.S.A.. 8-126(bb).

2. Work-site Utility Vehicles – MAY be exempt from Kansas Sales Tax. Effective July 1, 2006 the retail sale of a "work-site utility vehicle" that is equipped with a bed or cargo box for hauling materials may be purchased exempt from sales tax under the farm machinery and equipment sales tax exemption if used **only** in farming, ranching or aquaculture production. A "work-site utility vehicle" is defined as:

"Work-site utility vehicle" means any motor vehicle which is not less than 48 inches in width, has an overall length, including the bumper, of not more than 135 inches, has an unladen weight, including fuel and fluids, of more than 800 pounds and is equipped with four or more low pressure tires, a steering wheel and bench or bucket-type seating allowing at least two people to sit side-by-side, and may be equipped with a bed or cargo box for hauling materials. (Emphasis added). K.S.A. 8-126(hh).

To qualify for the farm machinery and equipment exemption from Kansas retailers' sales tax the purchase must:

- 1) Be of a work-site utility vehicle, as defined above, that is equipped with a bed or cargo box for hauling materials, or for repair or replacement parts therefor, or services performed in the repair or maintenance thereon, and
- 2) the work-site utility vehicle must be used **only** in farming, ranching, aquaculture production, farm and ranch work for hire, operation of a feed lot, nursery or for a Christmas tree farm, and
- 3) the retailer must retain in its records an Agricultural Exemption Certificate, Form

ST-28F completed by the purchaser. Said certificate is available on the Department's web site: www.ksrevenue.org As an alternative to the Agriculture Exemption Certificate, the purchaser may certify in writing on a copy of the invoice or sales ticket to be retained by the seller that the work-site utility vehicle will be used only in farming, ranching or aquaculture production. K.S.A. 79-3606(t).

3. Sales of ATVs and Work-site Utility Vehicles to nonresidents of Kansas. ATVs and Work-site Utility Vehicles sold by **Kansas dealers** to nonresidents of Kansas are subject to Kansas retailers' sales tax when the purchaser takes delivery of the ATV or Work-site Utility Vehicle in Kansas. Only "motor vehicles", "semitrailers", "pole trailers" or "aircraft" may be purchased by nonresidents of Kansas without Kansas sales tax. ATVs and Work-site Utility Vehicles DO NOT fall within the definition of "motor vehicle". Therefore, sales of ATVs and Work-site Utility Vehicles are subject to Kansas sales tax when sold to a nonresident of Kansas who takes possession of the ATV or Work-site Utility Vehicle within Kansas.

No Kansas sales tax is due when a Kansas dealer is obligated as part of the sale to deliver the ATV or Work-site Utility Vehicle to a point outside of the state of Kansas. No Kansas sales tax is due on sales delivered to another state whether the Kansas dealer makes the delivery himself or has someone else make the delivery for him.

Kansas dealers must exercise caution when making deliveries with their own vehicles into other states. Delivery of goods sold into another state may create a "NEXUS" – a substantial presence in another state – for tax purposes. In terms of taxation, a nexus means that the seller has a connection or presence within that other state sufficient to require the seller to collect, report and remit tax for that other state. A Nexus with another state is usually created when the Kansas retailer (dealer):

- owns or rents real estate in that other state or,
- has employees or agents in that other state or,
- makes deliveries with his own vehicles into that other state.

Establishing NEXUS with another state obligates a Kansas dealer to collect that other state's sales tax.

EXAMPLE: A Kansas ATV dealer sells an ATV to a Nebraska resident and as part of the sale, the Kansas dealer agrees to deliver the ATV into Nebraska. No Kansas sales tax is due because the dealer delivered the ATV across a state line. However, because the Kansas dealer delivered the ATV into Nebraska with his own vehicle, the Kansas dealer may be required to collect the Nebraska Compensating Use Tax*.

*One (1) delivery into another state by itself does not create a nexus – the presence in the other state must be "substantial". While no specific minimum number of deliveries creates a nexus – a Kansas dealer who makes several deliveries with his own vehicles run the risk that the other state would require the Kansas dealer to collect that state's tax. To avoid creating a nexus, deliveries into another state must be made by a licensed Interstate Common Carrier.

4. Sales of ATVs or Work-site Utility Vehicles by Out-of-State dealers delivering into Kansas. ATVs and Work-site Utility Vehicles sold by **Out-of-state dealers** to residents of Kansas are subject to Kansas Compensating Use Tax. The rate of the Kansas Compensating Use Tax is the same rate of tax as the Kansas Sales Tax in effect where the ATV or Work-site Utility Vehicle will be used, stored or consumed. The Kansas purchaser is required to remit the Kansas Consumers' Compensating Use tax to KDOR on Form ST-10U, which is available from the KDOR web site: www.ksrevenue.org. Kansas purchasers are required by law to pay the Kansas Consumers' Compensating Use Tax unless; the out-of-state dealer has collected the Kansas Retailers' Compensating Use Tax on the sale.

Pursuant to the NEXUS principles discussed in paragraph #3 above, **out-of-state dealers delivering ATVs and Work-site Utility Vehicles into Kansas with their own vehicles** may be required to collect the Kansas Retailers' Compensating Use Tax for the state of Kansas. Out-of-state dealers who have a nexus with Kansas are required to collect, report and remit Kansas Retailer's Compensating Use Tax on goods sold into Kansas. The nexus principals set out above are based on federal law. Thus, they apply in reverse. In other words, out-of-state retailers who own or rent real estate in Kansas, or have employees or agents in Kansas or, who make deliveries with their own trucks into Kansas have created a nexus with Kansas and are required to collect, report and remit Kansas Retailers' Compensating Use Tax. Out-of-state retailers (dealers) should contact the Taxpayer Assistance Center, KDOR, 915 SW Harrison, Topeka, KS 66612, or call 785-368-8222 for additional information.

Likewise, citizens desiring to report out-of-state retailers who have a nexus with Kansas but, who are not collecting, reporting and remitting the Kansas tax may contact the Taxpayer Assistance Center as well.

5. Titling of ATVs and Work-Site Utility Vehicles: Kansas law (K.S.A. 8-198) requires that with the sale or transfer of

any nonhighway vehicle, the purchaser shall obtain a nonhighway certificate of title. ATVs and Work-Site Utility Vehicles are defined by K.S.A. 8-197 as "nonhighway" vehicles. Thus, Kansas dealers making sales of ATVs or Work-Site Utility Vehicles are required to provide a Manufacturer's Certificate of Origination or a Certificate of Title to the purchaser.

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