

Samuel M. Williams, Secretary
Steve Stotts, Director

Sam Brownback, Governor

**State of Kansas
Department of Revenue
Notice of Hearing on Proposed Administrative Regulations**

A public hearing will be conducted by the Department of Revenue at 9:00 a.m. on Monday, February 20, 2017, in the Secretary's Conference Room on the fourth floor of the Mills Building, 109 SW 9th St, Topeka to consider the adoption of consumable material regulations. Copies of these proposed regulations may be found at www.ksrevenue.org.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written comments from the public on the proposed regulations. All interested parties may submit written public comments on the proposed regulations prior to the hearing to Justin Carroll, Financial Economist, Office of Research and Analysis, Docking State Office Building, 915 SW Harrison, Topeka, Kansas 66612 or through e-mail at justin.carroll@ks.gov.

All interested parties will be given a reasonable opportunity to present their views, either orally or in writing or both, concerning the adoption of the proposed regulations. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Justin Carroll at (785) 296-8042 or TTY (785) 296-6461. Disabled parking is located on the north side of the Mills Building on either side of 9th St. The north entrance to the Mills Building is accessible.

These regulations are proposed for adoption on a permanent basis. A summary of the proposed regulations and the economic impact follows:

**Kansas Department of Revenue
Article 57. Tax on Consumable Material**

Adoption of K.A.R. 92-57-1. K.A.R. 92-57-1 provides definitions for consumable material.

Adoption of K.A.R. 92-57-2. K.A.R. 92-57-2 refers to registration requirements for distributors.

Adoption of K.A.R. 92-57-3. K.A.R. 92-57-3 outlines how the tax will be applied to consumable material.

Adoption of K.A.R. 92-57-4. K.A.R. 92-57-4 provides the manner in which records will be kept.

Adoption of K.A.R. 92-57-5. K.A.R. 92-57-5 describes how monthly returns are filed.

Economic Impact:

The Kansas Department of Revenue anticipates the adoption of these regulations will require additional work for a Customer Representative Specialist (20%) and a Customer Representative (45%). No additional FTEs were requested.

Businesses wanting to sell consumable material will be required to register with the Kansas Department of Revenue and remit tax on the sale of consumable material. The adoption of this regulation will not impact other government agencies.

Article 57. Tax on Consumable Material

92-57-1. Definitions. For purposes of K.S.A. 79-3399 and amendments thereto and this article of the department's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Consumable material" means any liquid nicotine or other solution containing nicotine. For purposes of this definition, consumable material is the final product sold to consumers that is depleted as an electronic cigarette is used.

(b) "Consumer" means a person purchasing or receiving consumable material for final use.

(c) "Dealing" means engaging in the sale or manufacture of consumable material in Kansas.

(d) "Director" means director of taxation in the Kansas department of revenue.

(e) "Distributor" means any of the following:

(1) Any person in Kansas engaged in the business of selling or dealing in consumable material who brings, or causes to be brought, into Kansas consumable material for sale, unless that person is a retail dealer who has purchased the consumable material on a tax-paid basis from a distributor;

(2) any person who makes, manufactures, or fabricates consumable material for sale in Kansas;

(3) any person outside of Kansas engaged in the business of selling or dealing in consumable material who ships or transports consumable material to any person in the

ATTORNEY GENERAL

DEC 08 2016

APPROVED BY CR

APPROVED

DEC 06 2016

DEPT. OF ADMINISTRATION

business of selling or dealing in electronic cigarettes or consumable material in Kansas;
or

(4) any person who has one or more retail dealer establishments that do either of the following:

(A) Bring or cause to be brought into Kansas consumable material for sale by any of those retail dealer establishments; or

(B) make, manufacture, or fabricate consumable material in Kansas for sale in Kansas. However, each person who has a retail dealer establishment from which the consumable material is sold to the consumer shall be deemed a retail dealer.

(f) "Electronic cigarette" means a battery-powered device, whether or not the device is shaped like a cigarette, that can provide inhaled doses of nicotine by delivering a vaporized solution by means of cartridges or other chemical delivery systems.

(g) "Person" means any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise, and any combination of these individuals.

(h) "Retail dealer" means a person engaged in the business of selling or dealing in consumable material to the consumer in Kansas.

ATTORNEY GENERAL

DEC 08 2016

APPROVED BY *CR*

APPROVED

DEC 06 2016

DEPT. OF ADMINISTRATION

(i) "Sale" means any transfer of title or possession or both, exchange, barter, or distribution of consumable material, with or without consideration.

(j) "Secretary" means secretary of the Kansas department of revenue or the secretary's designee. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399; effective, T-_____, _____; effective P-_____.)

ATTORNEY GENERAL

DEC 08 2016

APPROVED BY CP

APPROVED

DEC 06 2016

DEPT. OF ADMINISTRATION

92-57-2. Certificate of registration. Each distributor shall obtain a certificate of registration issued by the director before engaging in the business of selling consumable material in Kansas. The distributor shall submit an application to the department on a form provided by the department.

The certificate of registration shall be displayed in a conspicuous location at the registered location. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399; effective, T-_____, _____; effective P-_____.)

ATTORNEY GENERAL

DEC 08 2016

APPROVED BY CP

APPROVED

OCT 07 2016

DEPT. OF ADMINISTRATION

92-57-3. Imposition of tax. (a) Each distributor who first performs any of the following shall pay the tax imposed by K.S.A. 79-3399, and amendments thereto:

(1) Brings or causes to be brought into Kansas consumable material for sale in Kansas;

(2) makes, manufactures, or fabricates consumable material in Kansas for sale in Kansas;

(3) ships or transports consumable material to retail dealers in Kansas to be sold by those retail dealers; or

(4) causes consumable material for which the tax has not been paid to be brought into Kansas.

(b) Liability for the tax on consumable material shall accrue when either of the following conditions is met:

(1) The consumable material is first brought into the Kansas for sale within Kansas.

(2) The consumable material is first made, manufactured, or fabricated in Kansas for sale within Kansas.

(c) A transfer of consumable material from one distributor to another distributor shall not relieve the distributor who first brought or caused the consumable material to be brought into Kansas from the tax liability.

(d) Each retail dealer shall purchase consumable material only from a registered distributor. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399; effective, T-

ATTORNEY GENERAL

DEC 08 2016

APPROVED BY CR

APPROVED

DEC 06 2016

DEPT. OF ADMINISTRATION

_____, _____; effective P-
_____.)

ATTORNEY GENERAL

DEC 08 2016

APPROVED BY CR

APPROVED

DEC 06 2016

DEPT. OF ADMINISTRATION

92-57-4. Books, records, and other documents required of distributor or retail dealer; access to premises. (a) Each distributor and each retail dealer shall keep in each place of business complete and accurate books, records, and other documents for that place of business, including itemized invoices of the following:

(1) All consumable material held, purchased, made, manufactured, fabricated, or brought or caused to be brought into Kansas or shipped or transported to retail dealers in Kansas; and

(2) all sales of consumable material.

Each distributor shall show the name and address of each purchaser, registration number if applicable, and any other documents relating to the purchase and the sale of or dealing in consumable material. Itemized invoices shall be made for all consumable material transferred to other retail dealer establishments owned or controlled by that distributor. All books, records, and other documents required shall be retained and maintained for at least three years after the date of the entries appearing in the books, records, and other documents, unless the director, in writing, authorizes the destruction or disposal of these books, records, and other documents at an earlier date. These books, records, and other documents may be maintained in an electronic format.

(b) At any time during regular business hours, any authorized agents or employees of the director may enter any place of business of a distributor or retail dealer and inspect the premises, the books, records, or other documents and the consumable material contained there, to determine whether the distributor or retail dealer is in compliance with all the provisions of the act and this article of the department's

ATTORNEY GENERAL

DEC 08 2016

APPROVED BY C 9

APPROVED

DEC 06 2016

DEPT. OF ADMINISTRATION

regulations. Refusal to permit an inspection by an authorized agent or employee of the director shall be grounds for revocation of any registration held by the distributor or retail dealer.

(c) Each person who sells consumable material to any person other than a consumer shall create with each sale an itemized invoice showing the seller's name and address, the purchaser's name and address, the purchaser's registration number if applicable, the date of the sale, the number of milliliters of consumable material, and all prices and discounts. The person selling or dealing in the consumable material shall retain and maintain a legible copy of each invoice for three years after the date of sale. These records may be maintained in an electronic format.

(d) Each distributor and each retail dealer shall obtain and maintain itemized invoices of all consumable material purchased. The distributor or retail dealer shall retain and maintain a legible copy of each invoice for three years after the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the director at the distributor's or retail dealer's place of business. These records may be maintained in an electronic format. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399; effective, T-_____, _____; effective P-_____.)

ATTORNEY GENERAL

DEC 08 2016

APPROVED BY CR

APPROVED

DEC 06 2016

DEPT. OF ADMINISTRATION

92-57-5. Monthly tax returns; remittance of tax; deficiencies. (a) On or before the twentieth day of each month, each distributor shall file a tax return with the director, showing the following:

(1) The number of milliliters of consumable material brought, or caused to be brought, into Kansas for sale; and

(2) the number of milliliters of consumable material made, manufactured, or fabricated in Kansas for sale in Kansas during the preceding month.

(b) Each registered distributor outside Kansas shall file a tax return showing the number of milliliters of consumable material shipped or transported to retail dealers in Kansas to be sold by those retail dealers, during the preceding month.

(c) Each tax return shall be submitted upon forms prescribed by the director. Each tax return shall be accompanied by a remittance for the distributor's full tax liability.

(d) As soon as practicable after any tax return is filed, the director shall examine the return. If the director finds that the tax return is incorrect and any amount of tax due from the distributor is unpaid, the director shall notify the distributor of the deficiency. If a deficiency disclosed by the director's examination cannot be allocated to a particular month or months, the director may notify the distributor that a deficiency exists and state the amount of tax due. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399; effective, T-_____, _____; effective P-_____.)

ATTORNEY GENERAL

DEC 08 2016

APPROVED BY C R

APPROVED

OCT 06 2016

DEPT. OF ADMINISTRATION

Samuel M. Williams, Secretary
Steve Stotts, Director

Sam Brownback, Governor

**KANSAS DEPARTMENT OF REVENUE
ECONOMIC IMPACT STATEMENT
K.A.R. 92-57-1 through 92-57-5**

I. Summary of Proposed Regulations.

In order to meet the requirements of K.S.A. 79-3399 as enacted, K.A.R. 92-57-1 through 92-57-5 have been proposed to clarify the intent of the statute.

II. Reason or Reasons the Proposed Regulation is Required, Including Whether or not the Regulation is Mandated by Federal Law.

The Kansas Department of Revenue has deemed it necessary to define certain terms not addressed by K.S.A. 79-3399, clarify who is required to register with the State, remit the consumable material tax, retain records, and file reports that were not addressed by K.S.A. 79-3399.

III. Anticipated Economic Impact upon the Kansas Department of Revenue.

The adoption of these regulations will require additional work for a Customer Representative Specialist (20%) and a Customer Representative (45%). No additional FTEs were requested.

IV. Anticipated Financial Impact upon other Government Agencies and upon Private Business or Individuals.

Businesses wanting to sell consumable material will be required to register with the Kansas Department of Revenue and remit tax on the sale of consumable material. The adoption of this regulation will not impact other government agencies.

V. Description of any Less Costly or Less Intrusive Methods that were Considered by the Department of Revenue for Achieving the State Purpose of the Regulation and the Reason that those Methods were Rejected in Favor of the Proposed Regulation.

The Kansas Department of Revenue has determined that the proposed regulations are the most efficient method for achieving its purpose of enforcing and administering the new consumable material tax in K.S.A 79-3399. The Department has conducted a series of correspondence with the Cigarette and Tobacco Industry and Wholesale Vapor Association and have developed these proposed regulations with their feedback.