

ISSUE ALERTS

ALL OUT-OF-STATE SELLERS NOW REQUIRED TO PAY KANSAS SALES TAX

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On August 1, 2019, the Kansas Department of Revenue (Department) issued Notice 19-04, requiring all out-of-state retailers who sell personal property in the State of Kansas (remote sellers) to collect and remit Kansas state sales tax. The Notice requires remote sellers to register with the state and begin collecting the tax by October 1 of this year. The Department will not enforce the requirements for sales made prior to October 1.

This Notice derives from the United States Supreme Court decision last year in *South Dakota v. Wayfair*. In that case, the Supreme Court held that physical presence in a state is not required to collect tax from remote sellers. The Department issued the Notice to provide guidance to remote sellers doing business in Kansas and set a timeline on initial compliance.

The Notice does not set any minimum threshold for Kansas sales before a seller is responsible for collecting the sales tax. The South Dakota law challenged in the *Wayfair* case had a minimum threshold of \$100,000 of in-state sales or 200 in-state transactions. Sellers below those thresholds did not have to collect and remit South Dakota taxes. Kansas law, however, does not include a similar minimum.

In an interview following the Notice's release, the Kansas Secretary of Revenue indicated that the Department does not have authority to apply similar minimum thresholds administratively, because the applicable statute (K.S.A. 79-3702(h)(1)(F)) imposes no minimum. Any minimum threshold would need to be added by the Legislature.

Some commentators have indicated that the lack of thresholds may expose the Notice and any subsequent enforcement action to legal challenge, based on the reasoning in the *Wayfair* decision, but that remains uncertain at this time.

Kansas is a full member of the Streamlined Sales and Use Tax Governing Board, along with 24 other states. Remote sellers can register directly with the Department or through the Streamlined Sales Tax Registration System. Other information is available on the Department's website, www.ksrevenue.org. Notice 19-04 can be

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accessed here.

FOR MORE INFORMATION

If you have any questions about your Kansas sales tax collection and remittance requirements, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. You may contact Jeremy Graber at 785.354.9412 or jgraber@foulston.com or any of Foulston's other tax attorneys. For more information on the firm, please visit our website at www.foulston.com.

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PRACTICE AREAS

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