

NOTICE 20-04

Sales Tax Requirements Concerning Digital Currency Under the Retailers' Sales and Compensating Tax Acts (NOVEMBER 2, 2020)

As used in this notice, the term “digital currency” means:

1. An unregulated electronic representation of monetary value that functions as a medium of exchange, but which does not have status as legal tender in any jurisdiction; and,
2. That is only available and used in an electronic form and that is stored and transacted only through designated software, mobile or computer applications, or through dedicated digital wallets, and the transactions occur over the internet through secure, dedicated networks.

Digital currency includes subsets of the digital currency group, and includes, but is not limited to, digital money, electronic money, electronic currency, cyber cash, virtual currency, bitcoin, ethereum, and cryptocurrencies, whether they exist within the blockchain network or not.

Digital currency does not include retailer coupons or gift cards.

This notice will address three primary matters related to digital currencies and the Retailers' Sales and Compensating Tax Acts.

1. Whether transaction fees for the exchange of digital currency is subject to Retailers' Sales Tax.

Transaction fees for digital currency exchanges are not deemed a sale of tangible personal property or an enumerated taxable service under the Retailers' Sales Tax Act. As a result, transaction fees for a digital currency exchange will not be subject to Kansas sales tax.

2. The measure of gross receipts for sales of tangible personal property or enumerated taxable services when the consumer pays the retailer in digital currency.

K.S.A. 79-3602(o) defines “gross receipts,” in pertinent part as: the total selling price or the amount received as defined in this act, in money, credits, property or other consideration valued in money from sales at retail within this state; and embraced within the provisions of this act.

K.S.A. 79-3602(l)(1) defines “Sales or selling price” to mean, in pertinent part: the measure subject to sales tax and means the total amount of consideration, including cash, credit,

property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, and includes all charges made to the purchaser, such as shipping, handling and storage charges, not expressly excluded from tax by statute. See K.S.A. 79-3602(i) and K.S.A. 79-3602(l)(1)(D).

K.S.A. 79-3602(ii) defines “Retailer” to mean a seller regularly engaged in the business of selling, leasing or renting tangible personal property at retail or furnishing electrical energy, gas, water, services or entertainment, and selling only to the user or consumer and not for resale.

K.S.A. 79-3670 provides the applicable tax rate and jurisdiction for tangible personal property or service is determined using destination-based sourcing.

Thus, when a customer pays for their purchases of tangible personal property or an enumerated service entirely or in part by digital currency, the seller is a retailer under the Retailers’ Sales Tax Act, and is obligated to collect and remit sales tax upon the gross receipts received. The sourcing rules established under K.S.A. 79-3670 control. Moreover, the fact that digital currency may be used as a form of payment does not affect the taxability of progress payments, credit/layaway payments or lease or license transactions. See K.A.R. 92-19-13a, K.A.R. 92-19-55b, and Revenue Ruling 19-2010-05.

When virtual currency is redeemed for a taxable product or enumerated service, the transaction is completed and the retailer’s sales or use tax liability accrues at that time.

With respect to each retail sale, sales tax is measured by the fair retail market value of the property or service received in payment for the property or service sold, and will be calculated using the list price in U.S. dollars of a good or service, not the value of the digital currency. The measure of tax includes all charges made to the purchaser, such as storage and handling charges, not expressly excluded from tax by statute.

When the property is transferred simultaneously, the property received must be valued in money on the date and at the place the property is paid and delivered to the retailer. The date of the contract is immaterial. Actual cost of the property to the transferor or book value of the property for accounting purposes are irrelevant. The measure of tax for use tax purposes is the same as for sales tax purposes.

When properties are transferred successively, each sale occurs when each property is transferred. Where the obligations of the parties are specified in the contract, the measure of tax for each sale is the fair retail market value of the property on the contract date. The fair retail market value to be used must be the fair retail market value at the place where the property received in payment is delivered to the retailer.

Where the obligations of the parties are not specified in the contract but rather are contingent on future events *i.e.* an output or requirements contract, the measure of tax for each sale is the fair retail market value of the property on the date of sale or on the date property received in payment for the sale is delivered to the retailer, whichever occurs first. The fair retail

market value to be used must be the fair retail market value at the place where the property received in payment is delivered to the retailer.

3. Whether the Department will accept digital currency as a form of payment or remittance.

Because digital currency is not recognized as legal tender by any jurisdiction, the Department will not accept digital currency as a form of payment or remittance. As such, while retailers may transact their sales using digital currency, when they remit the sales taxes due to the Department pursuant to K.S.A. 79-3607, they must remit those taxes in U.S. dollars. Retailers should convert any digital currency into U.S. dollars prior to remittance to the Department. The amount of tax to be remitted to the Department is the amount calculated at the time of the sale on the fair market value of the property or service received in payment for the property or service sold in U.S. dollars without regard to any gain or loss on the conversion of the digital currency to U.S. dollars.

Taxpayer Assistance

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