

New Kansas Sales Tax Exemption for Communications Service Providers in Effect

Alert

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During the 2024 legislative session, the State of Kansas enacted H.B. 2098, amending K.S.A. 79-3606 to include new Section 79-3606(uuuu). Section 79-3606(uuuu) provides a sales tax exemption for all sales of equipment, machinery, software and other infrastructure purchased for use in the provision of communications service, as well as purchases of services "used in the repair, maintenance or installation in such communications service." The new sales tax exemption applies to purchases made on or after July 1, 2024, and will remain in effect for purchases made through June 30, 2029. The legislation was originally vetoed by Governor Laura Kelly due to concerns about the total costs of tax legislation, but her veto was overridden soon thereafter.

Prior to the inclusion of K.S.A. 79-3606(uuuu), equipment that was purchased for use in the provision of communications service, in particular telecommunications, was not exempt from sales tax. Significantly, in *In re Sprint Commc'ns Co.*, decided in 2004, the Kansas Supreme Court held that because telecommunications service providers do not, by definition, produce items of tangible personal property, the existing sales tax exemptions provided by K.S.A. 79-3606 did not apply to purchases of telecommunications equipment. K.S.A. 79-3606(uuuu) cures this issue by expressly extending a sales tax exemption to purchases of equipment used in the provision of communications service, thus removing the requirement of producing tangible personal property in order to qualify for exemption under K.S.A. 79-3606.

Qualified "communications service" under new K.S.A. 79-3606(uuuu) is defined to mean internet access service, telecommunications service, video service (as defined in K.S.A. 12-2022), or any combination thereof. In this regard, it is important to note that under Section 12-2022, the term "video service" (1) means video programming services provided by a video services provider through wireline facilities owned,

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controlled, constructed or operated by the provider of such video service and located at least in part in the public rights-of-way without regard to delivery technology and (2) does not include streaming services.

The long list of exempt equipment, machinery, software and other infrastructure under new Section 79-3606(uuuu) includes, but is not limited to, wires, cables, fiber, conduits, power equipment, and any items used for monitoring or testing qualifying equipment. Note that this list is merely illustrative, and that the terms "equipment," "machinery" and "infrastructure," as used in Section 3606(uuuu), are general in nature and require taxpayers to make determinations based on their unique facts and circumstances as to whether their purchases qualify for sales tax exemption.

Communications service providers who wish to claim the new sales tax exemption should complete Form ST-63, Communications Service Provider Exemption Certificate, and provide the certificate to their vendors.

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