

July 9, 2010

Jane Page  
Chair, SLAC Steering Committee  
SD Department of Revenue and Regulation  
445 East Capitol Avenue  
Pierre, SD 57501-3185

Re: Kansas Comments in Opposition to Proposed Minnesota Amendment to SSUTA  
AM09018 dated August 28, 2009

Dear Ms. Page:

The above-referenced proposed amendment to SSUTA has been referred by the Governing Board to the State and Local Advisory Council (SLAC) and may appear on the agenda for consideration at the July 22, 2010 SLAC meeting via conference call. The proposed amendment, as currently worded, would add a new section providing:

Each member state shall provide all sellers and purchasers with a period of time to claim a refund that is not shorter than the standard period allowed by the state to issue an assessment for a tax period for which a tax return was timely filed.

This amendment would severely restrict a state's ability to timely respond to the type of revenue shortfalls we are experiencing in the current economic recession. The Kansas Legislature, in Section 9 of 2009 Senate Substitute for House Bill 2365, shortened the sales and use tax refund claim statute of limitations in K.S.A. 2008 Supp. 79-3609 from 3 years to 1 year from the due date of the return, effective for refund claims filed after June 15, 2009. The statute of limitations for assessments (3 years from the filing of the return) remained unchanged. Proposal AM09018, if it becomes part of the SSUTA, would clearly put Kansas out of compliance.

House Bill 2365 was enacted at the end of the 2009 Legislative Session in response to a severe revenue shortfall. It contained a number of tax-related provisions, in addition to shortening the sales and use tax refund statute of limitations (Secretary of Revenue settlement authority, 10% across-the-board reduction of most income tax credits, temporary suspension of one credit and annual cap on another, income tax statute of limitations amendment), enabling the State to balance its FY 2010 budget, generating a projected positive revenue impact of \$61 million. Of that \$61 million, \$13.7 million was attributable to the shortening of the statute of limitations for sales and use tax refund claims.

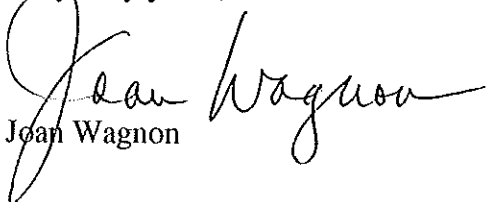
In order to address concerns about how this shortened statute of limitations on refund claims would be applied during an audit, the Department published Revenue Ruling 2009-02 (copy enclosed). The Revenue Ruling provides that overpayments of sales and use tax made during the audit period (even if outside the 1-year refund statute of limitations) will be allowed to offset any tax assessment, not to exceed the amount of the assessment.

The SSUTA has never dictated what a Member State can or cannot impose sales or use tax on, or what the rates should be. It has also never included any restrictions on the length of time that a Member State should use for a statute of limitations on assessments or refund claims. These are clearly policy choices that each State Legislature must be free to address. Proposal AM 09018 goes far beyond the scope of the fundamental purposes of the SSUTA described in Section 102 and would infringe on a State's taxing authority, contrary to Section 103.

Constituents who oppose the Kansas Legislature's recent shortening of the sales and use tax refund claim statute of limitations can urge the Kansas Legislature in any future legislative session to change it. But if proposals for amendments to the SSUTA become the new forum for addressing concerns about individual State tax policy changes that have always before been beyond the scope of the uniformity and simplicity requirements of the SSUTA, future Governing Board meetings will become a hopeless quagmire.

I urge your strong opposition to the proposed Minnesota amendment to the SSUTA, AM 09018.

Very truly yours,

  
Joan Wagnon

# Revenue Ruling

Ruling Number : 19-2009-02  
Tax Type: Kansas Compensating Tax ; Kansas Retailers ' Sales Tax  
Brief Description : Application of Senate Substitute for House Bill 2365 Statute of Limitations for Sales and Use Tax Refunds During Field Audits  
Keywords:  
Approval Date : 06/26/2009

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Body:

## **KANSAS DEPARTMENT OF REVENUE OFFICE OF THE SECRETARY**

### **Revenue Ruling 19-2009-02**

**June 26, 2009**

#### **Application of Senate Substitute for House Bill 2365 Statute of Limitations for Sales and Use Tax Refunds During Field Audits**

This Revenue Ruling provides guidance concerning the manner in which the Department of Revenue will implement certain provisions contained in 2009 Senate Substitute for House Bill 2365, which was enacted by the Kansas Legislature in the final hours of the veto session to help balance the State General Fund .

Section 9 of Senate Substitute for House Bill 2365 shortened from three years to one year the statute of limitations on the filing of claims for sales and compensating (use) tax refunds and credits. This amendment was projected to generate \$13.7 million in additional net revenue in fiscal year 2010.

The statute of limitations on sales and use tax assessments remains at three years from the date the return is filed for the tax period in question and is unaffected by this legislation.

Questions have been asked concerning the manner in which the Department of Revenue will allow sales and use tax refunds and credits identified during the course of a field audit. Consistent with the discussions that took place during the legislative process leading up to the enactment of the bill , effective as of June 16, 2009, the Department of Revenue will allow overpayments of sales and use tax made during the audit period to offset any tax assessment , not to exceed the amount of such assessment. To receive a refund, the taxpayer under audit must file a refund claim pursuant to K.S.A. 2008 Supp. 79-3693 within the one-year statute of limitations applicable under Section 9 of Senate Substitute for House Bill 2365.

This revenue ruling replaces and supersedes all prior advice , revenue rulings and

rulings that have been issued regarding the statute of limitations concerning sales and use tax refunds in the context of an audit.

Secretary of Revenue

Joan Wagnon