

State of Kansas



NON-RESIDENT CONTRACTORS' REGISTRATION AND BONDING LAW

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Chapter 79: TAXATION

Article 10.—Merchants, Manufacturers, Motor Vehicle Dealers and Certain

79-1008. Collection of taxes from nonresident contractors; "contractor" defined. For the purpose of this act, "contractor" includes individuals, partnerships, firms or corporations, or other associations of persons engaged in the business of the construction, alteration, repairing, dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, oil and gas wells, water wells, pipe lines, transmission and power lines, and every other type of structure, project, development or improvement coming within the definition of real property and personal property, including such construction, alteration, or repairing of such property to be held either for sale or rental, and further including all subcontractors.

History: L. 1957, ch. 515, § 1; L. 1959, ch. 370, § 1; June 30

79-1009. Collection of taxes from non-resident contractors; registration for certain contracts. To the end that the state of Kansas and the political subdivisions thereof may receive all taxes due in every instance, including contributions due under the employment security law, contractors, who are nonresidents of this state, desiring to engage in, prosecute, follow or carry on the business of contracting as defined in this act shall register with the secretary of revenue or the secretary's designee for each contract where the total contract price or compensation to be received amounts to more than \$10,000, except that a foreign corporation authorized to do business in this state shall not be required to register under the provisions of this act.

History: L. 1957, ch. 515, § 2; L. 1968, ch. 289, § 1; L. 1989, ch. 291, § 12; L. 1992, ch. 53, § 1; L. 2000, ch. 184, § 22; July 1

79-1010. Same; surety bonds for certain contractors; conditions; amount; increase, when; release; withholding moneys by certain contractors to guarantee payment of taxes; enforcement of act. Every contractor required to register any contract or contracts, as defined in this act, shall, before entering into the performance of such contract or contracts, execute and file with the secretary or the secretary's designee a good and valid bond in a surety company authorized to do business in this state, or with sufficient sureties to be approved by the secretary or the secretary's designee, conditioned that all taxes, including contributions due under the employment security law, which may accrue to the state of Kansas and all taxes which may accrue to the political subdivisions thereof on account of the execution and performance of such contract or contracts, will be paid when due, and the execution and filing of such bond shall be a condition precedent to commencing work on any contract in the state of Kansas. Such bond shall be conditioned as hereinabove provided with respect to all contracts to be performed during the current calendar year and shall be in a sum of not less than \$1,000. If at any time during the current calendar year the secretary or the secretary's designee shall determine the amount of the bond is not sufficient to cover the tax liabilities accruing to the state of Kansas or the political subdivisions thereof for the current calendar year, or, upon written request of the secretary of labor, the secretary or the secretary's designee shall require such bond to be increased in such sum as the secretary or the secretary's designee may determine to be proper. When any contractor shall have fully performed all contracts registered during the current calendar year, the bond may be released by the secretary or the secretary's designee.

Any contractor who is or becomes subject to the provisions of this act and every contractor required to register any contract or contracts, as defined in this act, who contracts with any subcontractor, who also is or becomes subject to the provisions of this act or is required to register any contract or contracts as defined in this act, shall withhold sufficient moneys on such contract to guarantee that all taxes, including contributions due under the employment security law, which may accrue to the state of Kansas and all taxes which may accrue to the political subdivisions thereof on account of the execution and performance of such contract or contracts, will be paid when due. Failure to comply with the provisions of this section shall render the contractor directly liable for such taxes, contribution, penalties, and interest due from the subcontractor and the secretary or the secretary's designee shall have all of the remedies of collection against the contractor under the provisions of this act as though the services in question were performed directly for such contractor.

Every person failing to register as required by this act, or to execute the bond herein provided before beginning the performance of any contract, shall be denied the right to perform such contract until such person complies with such requirements, and the county attorney of any county in which the contract is to be performed, general counsel of the department of labor when requested by the secretary of labor, or the attorney for the secretary of revenue, when requested by the secretary or the secretary's designee is hereby authorized to proceed by injunction to prevent any activity in the performance of such contract until such registration is made and such bond is executed and filed, and any temporary injunction enjoining the execution of such contract shall be granted without notice by any judge now authorized by law to grant injunctions.

History: L. 1957, ch. 515, § 3; L. 1959, ch. 371, § 1; L. 1963, ch. 462, § 1; L. 1968, ch. 289, § 2; L. 1989, ch. 291, § 13; L. 2004, ch. 179, § 145; July 1

79-1011. Same; secretary of state as agent for service of process, appointment; effect. At the time such contractor registers with the secretary or the secretary's designee, the contractor shall make an appointment, in writing, of the secretary of state of the state of Kansas, or the secretary's successor in office, to be the true and lawful agent of the contractor, upon whom may be served all lawful process in any action or proceeding against the nonresident contractor for state and local taxes growing out of any contract executed, or being executed, in this state. Such appointment, in writing, shall be evidence of such contractor's agreement that any such process against the contractor which is so served on the secretary of state shall be of the same legal force and validity as if served upon the contractor personally within the state.
History: L. 1957, ch. 515, § 4; L. 1989, ch. 291, § 14; April 27

79-1012. Same; actions against contractors; procedure. An action against any contractor coming within the provisions of this act may be brought by the attorney for the secretary of revenue or the general counsel of the department of labor in Shawnee county or in any county in which any work under any such contract is performed. The summons shall be directed to the secretary of state, and shall require the defendant to answer by a certain day, not less than 40 days nor more than 60 days from such date. The summons shall be forthwith forwarded by the clerk of the court to the secretary of state, who shall immediately forward a copy thereof to the contractor at the address given by such contractor and thereupon the secretary of state shall make return of the summons to the court whence it issued, showing the date of its receipt by the secretary, the date of forwarding such copy and the name and address of the person to whom the secretary forwarded such copy. Such return shall be under the secretary's hand and seal of office, and shall have the same force and effect as a due and sufficient return made by the sheriff on process directed to the sheriff.

The secretary of state shall keep a suitable record book, in which the secretary shall docket every action commenced against any such contractor. This record shall show the court in which the suit is brought, the title of the case, the time when commenced, and the date and manner of service.

History: L. 1957, ch. 515, § 5; L. 1989, ch. 291, § 15; L. 2004, ch. 179, § 146; July 1

79-1013. Same; failure to comply with act; effect. Any contractor who fails to register with the secretary or the secretary's designee as required by this act, or who fails to comply with any of the provisions of this act, shall not be entitled to maintain an action to recover payment for performance in the courts of this state on such contract.
History: L. 1957, ch. 515, § 6; L. 1989, ch. 291, § 16; April 27

79-1014. Same; administration of act; rules and regulations; release of bond. The secretary of revenue or the secretary's designee shall administer this act. The secretary shall adopt rules and regulations for the administration of this act. No bonds required under this act shall be released until the contract for which any such bond is given shall be fully performed, nor until the secretary or the secretary's designee shall obtain a written release from the secretary of labor certifying that all contributions and interest due by the principal on such bond, under the employment security law, have been paid in full.
History: L. 1957, ch. 515, § 7; L. 1972, ch. 342, § 88; L. 1989, ch. 291, § 17; L. 2004, ch. 179, § 147; July 1

79-1015. Same; penalties for violations. Every person failing to register as required by this act, or to execute the bond herein provided, before beginning the performance of any contract, or who violates any other provision of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000).
History: L. 1957, ch. 515, § 8; July 1.

Agency 92:—KANSAS DEPARTMENT OF REVENUE

Article 15.—NONRESIDENT CONTRACTORS

92-15-1 (Authorized by K.S.A. 79-1008, 79-1014; effective Jan. 1, 1968; **revoked** May 1, 1983).

92-15-2 (Authorized by K.S.A. 1968 Supp. 79-1009, 79-1014; effective Jan. 1, 1968; amended Jan. 1, 1969; **revoked** May 1, 1983).

92-15-3. Change of name, address, or ownership. Each nonresident contractor shall perform each contract under the same name used to register the contract for purposes of K.S.A. 79-1008 et seq. and amendments thereto, unless the contractor secures and provides the department with a rider to the bond that shows the change of the business name. A rider shall not be used and shall not be accepted by the department if a business changes from operating as one kind of legal entity to another, including from a sole proprietorship to a corporation. Each nonresident contractor shall immediately report any change of name, address, or ownership to the secretary of revenue.

(Authorized by K.S.A. 79-1014; implementing K.S.A. 79-1010; effective Jan. 1, 1968; amended March 29, 2002.)

92-15-4. Registration not assignable. The registration of a contract shall not be assigned or transferred to a different legal entity and shall be used only by the person, partnership, corporation, or other legal entity that the registration identifies as the person or entity that is performing the contract. Each assignment or transfer of the contract to a different legal entity, including to a successor entity that operates under the same business name, shall terminate registration of the contract and shall require the new entity to apply for a new registration and secure a new bond.

(Authorized by K.S.A. 79-1014; implementing K.S.A. 79-1010; effective Jan. 1, 1968; amended March 29, 2002.)

92-15-5 (Authorized by K.S.A. 1968 Supp. 79-1010, 79-1014; effective Jan. 1, 1968; amended Jan. 1, 1969; **revoked** May 1, 1983).

92-15-6 Bond; time in effect. Each nonresident contractor's bond required under K.S.A. 79-1010, and amendments thereto, shall be the equivalent of an annual bond that covers only those contracts begun during the calendar year in which the bond is filed. This bond shall remain in effect until all contracts registered during the calendar year in which the bond was filed are fully performed and all taxes due under it are paid.

(Authorized by K.S.A. 79-1014, 79-1010; effective Jan. 1, 1968; amended July 27, 2001.)

92-15-7 (Authorized by K.S.A. 1968 Supp. 79-1010, 79-1014; effective Jan. 1, 1968; amended Jan. 1, 1969; **revoked** May 1, 1983).

92-15-8. Bond; release. The bond required under K.S.A. 79-1008 et seq., and amendments thereto, shall be released only after the contract or contracts secured by the bond are fully performed and the secretary of revenue has received the following written releases: (a) A certification from the secretary of human resources that all contributions and interest due from the nonresident contractor under the employment security law have been paid; and (b) a certification from the county treasurer of each county where the nonresident contractor performed the contract or contracts under the bond, that all taxes accruing because of the performance of the contract or contracts have been paid, or that no taxes are due.

(Authorized by K.S.A. 79-1014; implementing K.S.A. 79-1010; effective Jan. 1, 1968; amended March 29, 2002.)

92-15-9 to 92-15-12 (Authorized by K.S.A. 79-1010 et seq.; effective Jan. 1, 1968; **revoked** May 1, 1983.)