**Opinion Letter**

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| **Letter Number:** | **O-1999-10** |

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| **Tax Type:** | **Kansas Compensating Tax; Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Distributor of graphic arts supplies and equipment and a supplier of service (installation and repairs) to the graphic arts industry.** |
| **Keywords:** |  |
| **Approval Date:** | **03/12/1999** |

**Body:**

Office of Policy & Research

March 12, 1999

XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Dear XXXXXXXXXXX:

I have been asked to respond to your letter of February 25, 1999. In it, you ask about the sales and use tax responsibilities of your company. Your letter states that you are a distributor of graphic arts supplies and equipment and a supplier of service (installation and repairs) to the graphic arts industry. You have a nationwide network of service people and are registered in the various states as a retailer and wholesaler of supplies and service. You have a California customer who purchases service from you for resale to his customers in Kansas. Specifically, the charges are for installation of equipment completed by your service person at a third party’s location. The installation charge is separately stated on the invoice (to the reseller), the installed property remains tangible personal property, and there is not a separate contract between the buyer and seller covering installation.

You asked the Department to inform you as to whether or not installation of tangible personal property is subject to Kansas retailers’ sales tax, and if the this service is taxable under what circumstances can you invoice the reseller free of tax?

Kansas law imposes sales tax on “the gross receipts received for the service of installing. . . tangible personal property which when installed or applied is not being held for sale in the regular course of business, and whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate, except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building or facility. . .” K.S.A. 79-3603(p). The term “original construction of a building or facility” means the first or initial construction of a new building or facility. The term "original construction" shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances. . .” 79-3603(p)(1).

Kansas Administrative Regulation 92-19-66b states, “Labor services. (a) Each contractor, subcontractor, and repairman shall be responsible for collecting and remitting sales tax on taxable services performed for others, including taxable services performed for other contractors. A contractor, subcontractor, or repairman shall not issue or accept a resale exemption certificate that claims an exemption from sales tax for services being purchased from or sold to another contractor, subcontractor, or repairman.”

It is the opinion of the Kansas Department of Revenue that tax is imposed on the service of installing tangible personal property. The tax must be imposed, collected and remitted by the person performing the service. Another retailer may purchase this service under a resale exemption certificate. Other exemptions or exceptions may cause the tax not be collected. For instance: if the service is performed in the original construction of a building or facility; or if performed pursuant to a enterprise zone project exemption certificate. There may be other occasions that the sale is exempt. I have answered to the specifics of your inquiry.

This is a private letter ruling pursuant to K.A.R. 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This ruling will be revoked by operation of law without further department action if there is a change in the controlling statutes, administrative regulations, revenue rulings or case law that materially effects this determination.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 03/29/1999 Date Modified: 10/10/2001**