**Opinion Letter**

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| **Letter Number:** | **O-2000-018** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Operation of a quarry in Kansas and performance of construction contracts with rock and other materials removed from that quarry.** |
| **Keywords:** |  |
| **Approval Date:** | **10/02/2000** |

**Body:**

Office of Policy & Research

October 2, 2000

XXXXX
XXXXX
XXXXX

RE: Your letter of September 11, 2000

Dear XXXXX:

I have been asked to answer your letter that we received last month. In it, you ask what the sales tax consequences are for a business that operates a quarry in Kansas and performs construction contracts with rock and other materials removed from the quarry. The quarried materials are sold at retail to others and are used by the quarry operator when it performs construction contracts. These two activities make your client a contractor-retailer for Kansas purposes. I believe that it may make them dual operators, under Missouri laws.

There are three basic concepts that control how Kansas sales and use tax applies to your client. The first is that sales of sand and gravel are sales of tangible personal property. When sand, rock, minerals, trees, crops, trees, sod, and other items that are affixed to or part of real property are severed from real property, they become tangible personal property. Once something has become tangible personal property, its sale or use in Kansas is subject to the Kansas retailers’ sales tax act. This means that you client is operating as a retailer when it sells rock from the quarry.

The second controlling concept is that contractors are the final consumers of the tangible personal property used to perform a construction contract. K.S.A. 79-3603(l). Contractors are viewed as consumers because they convert materials into real property --- they do not resell them as tangible personal property.

When your client performs a job using rock and other quarried materials in Kansas, they can have two different reporting obligations depending on whether their labor services are taxed or exempt. When labor services are taxed, you client simply needs to charge tax on the entire amount billed to the customer, less any tax paid subcontractors or tax paid materials. See K.A.R. 92-19-66b(b). This will produce the correct amount of tax for the state since no tax has been paid on the quarried rock and other materials. This is can be viewed as the taxable sale of the materials and the taxable sale of the labor services.

Where the contract involves labor services that are not taxed or rock is used in another state, your client will be viewed as a consumer and will have to determine his costs for quarrying the rock. It is on this amount that tax must be remitted to the state. If your client is selling quarried rock to the public, your client already has an accounting mechanism in place to determine their costs for quarried materials. This is a requirement for any quarry that intends to stay in business.

Your client should use the same accounting mechanism to determine their cost of materials they use on a job. Essentially, this means using the same accounting mechanism that is used to determine the retail selling price, but excluding the mark-up taken as a profit on retail sales. It is on this basis that your client would be required to accrue tax for Kansas jobs that involve non-taxable labor services, and out-of-state jobs. The materials for the out-of-state job are taxed because your client is acting as a contractor-retailer who is withdrawing the rock from the Kansas inventory for use outside Kansas.

Please note that when this issue has come up in the past, businesses have asked our auditors to review the way in which they accrue materials costs. If you would like to do this, please contact Bob Lewis in our Tax Compliance Section at (785) 296-7487.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

cc: Bob Lewis

**Date Composed: 10/03/2000 Date Modified: 10/10/2001**

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