**Opinion Letter**

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| **Letter Number:** | **O-2010-001** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Rock picked up at a Kansas quarry and delivered to a jobsite in Oklahoma.** |
| **Keywords:** |  |
| **Approval Date:** | **03/26/2010** |

**Body:**

Office of Policy & Research

March 26, 2010

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XXXX

RE: Your email received on March 11, 2010

Dear XXXX:

I have been asked to respond to your recent e-mail. You work for a Kansas construction company that has hired a trucking company to pick up rock from a quarry in Kansas and deliver it to a jobsite in Oklahoma. You ask whether the quarry should charge Kansas sales tax or Oklahoma use tax on the sales transaction. The answer is Kansas sales tax is owed when the rock is delivered to the trucking company at the quarry. Kansas state and local sales tax is owed on the purchase price of the rock, which does not include shipping costs that your company separately contracted for.

Most states provide a credit for taxes paid to another states. When this credit is allowed, the tax amount owed is the difference between the results that are reached by multiplying the combined state and local sales tax rate imposed by each state by the amount of the appropriate tax base for each state. If the resulting amount of Oklahoma state and local use tax is greater than the amount of Kansas state and local sales tax, your company likely owes the difference as Oklahoma use tax. *See K.S.A. 79-3704(c).* If there is such a use tax liability, it will be determined by Oklahoma law.

The reason that Kansas sales tax is owed is that your company hired a private carrier to pick up the rock at a quarry in Kansas. K.A.R. 92-19-29 instructs: "[W]here tangible personal property pursuant to a sale is delivered in this state to the buyer or his agent other than a common carrier, the sales tax applies, notwithstanding that the buyer may subsequently transport the property out of this state." The trucking company is acting as your agent when it takes delivery of the rock that your company is buying from the Kansas quarry. The taxable event is the delivery of the rock to your agent in Kansas, which means that Kansas state and local sales tax is owed.

If your company had contracted with the quarry for the quarry to use its own trucks to deliver the rock to Oklahoma, no Kansas sales or use ax would be owed since the seller was required to deliver the rock being sold to a point outside Kansas. *See K.A.R. 92-19-29 quoted above.*Similarly, if the quarry had hired a private carrier to deliver the rock to Oklahoma, no Kansas sales or use tax would be due because the private carrier was acting as the quarry's agent rather than as your agent, and the rock was being delivered to a point outside Kansas. This means that if the sale of the rock to your company was exempt from Oklahoma sales tax but not from Kansas sales tax , you could have avoided sales tax altogether by directing the quarry to either deliver or hire a contract carrier to deliver the rock to your Oklahoma job site.

One of the consequences of the seller hiring a private carrier is that the shipping charges may be subject to sales or use tax, as such charges are in Kansas under K.S.A. 2009 Supp. 79-3602(ll). This section specifies that the "sales or selling price," which is the tax base that is multiplied by the tax rate to determine the tax amount owed, includes delivery charges and installation charges. Many other state sales tax laws are like the Kansas law and include shipping charges that are billed by the seller to the buyer in the "sales or selling price" that is subject to sales or use tax. Not all states do this, however.

For purposes of this exemption, "common carrier" means a business like UPS, Fed Ex, and DHL that holds itself out as providing its services to the general public for reasonable rates without discrimination. A contract carrier offers hauling or deliver services to individuals or businesses under a contract.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 03/29/2010 Date Modified: 03/29/2010**