**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-1998-198** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Swimming pool maintenance.** |
| **Keywords:** |  |
| **Approval Date:** | **11/24/1998** |

**Body:**

Office of Policy & Research

November 24, 1998

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXX:

The purpose of this letter is to respond to your letter dated November 5, 1998.

1998 Senate Bill No. 493 exempts certain construction services that were formerly subject to Kansas sales tax. Effective July 1, 1998, services performed to install or apply tangible personal property are exempt from sales tax when the services involve the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence.

The department has determined that it will construe and administer K.S.A. 79-3603(p)(4) as exempting the land improvements that immediately surround a residence. This means the exemption for residential repair and remodeling services generally will be coextensive with the exemption for the original construction of the residence.

The test for whether something is a “land improvement” shall be whether tangible personal property has been erected upon or affixed to the land. To qualify as residential, the land improvement must be immediately near and must principally serve the residence. This means that repairs to a yard fence are exempt but that repairs to a fence designed to corral pleasure horses are not. Barns and machine sheds for farm equipment shall not be considered to be land improvement that principally serve the residence.

Land improvements shall include, but not be limited to, sidewalks, driveways, patios, fences, sod, tree planting, utility pipes and wires, septic tanks, swimming pools, and tool sheds. Repair services to structures such as steps, stairs, acbess ramps, porches, and decks shall be exempt whether they are considered to be part of the residence because they are attached to it, or a land improvement because they are immediately nearby.

The service of maintaining a pool, that is a permanent fixture to real property, at a residence would be exempt from sales tax in the state of Kansas. This service would be exempt regardless if chemicals or parts are provided by the service provider or pool owner.

The new law does not change the taxation of sales of materials and supplies that are purchased for use in residential construction or in other type of construction. These sales continue to be subject to state and local sales tax.

You ask these specific questions and request answers:

1. The company provides maintenance service in winterizing customer’s pools for the winter and opening in the spring. No replacement parts are used and the customer provides all chemicals used in the process. Is the labor exempt from tax?

Answer: Yes.

2. Same situation as 1., except that the company provides the chemicals used in the winterizing and opening. If the chemical supplies are billed as a separate item and tax charged on the supplies, is the labor exempt from tax?

Answer: Yes.

3. Situation 2., except that the price of the maintenance service includes the price of the chemicals. Is the entire amount exempt from tax, and would the company be required to pay sales tax on the supplies as items purchased without tax but consumed by the company?

Answer: If the company purchases the supplies for the purpose of resale and then consumes the chemicals while providing a service, the company would be required to accrue sales tax on the chemicals. The service is exempt from sales tax.

4. In the course of winterizing or opening a pool, the company installs repair parts on the pool and equipment. The repair parts are listed separately and sales tax charged on the parts. Is the labor exempt from tax on the repair services and/or the winterizing maintenance services?

Answer: Yes.

This is a private letter ruling pursuant to Kansas Administrative Regulation 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 private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this ruling.

For your convenience, I have enclosed Revenue Notice 98-02, which is entitled, “Exemption of Residential Repair and Remodel Work”.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC
encl.

**Date Composed: 12/08/1998 Date Modified: 10/10/2001**