**Private Letter Ruling**

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| **Ruling Number:** | **P-1998-76** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Backhoe services and sales in interstate commerce.** |
| **Keywords:** |  |
| **Approval Date:** | **08/19/1998** |

**Body:**

Office of Policy & Research

August 19, 1998

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RE: Your letter of August 7, 1998

Dear XXXXX:

Thank you for your letter of August 7, 1998 regarding how you should collect Kansas sales tax on greeting card sales and backhoe services. I will discuss your questions in order.

Paragraph I, Sub. 1. Your first question involves taxation of sales of stationary and greeting cards. Retail sales of these items are subject to Kansas sales tax since Kansas taxes sales of tangible personal property.

Shipments: Kansas sales tax law applies to *intrastate* sales of tangible personal property. The ability of Kansas to tax *interstate* sales is limited by the commerce clause of the United States Constitution. Delivery is the key to understanding when you should collect sales tax on items that are shipped or sold to non-residents.

A sale normally takes place at the time and place that property is delivered to the buyer. If delivery is made to a Kansas address by a Kansas retailer, the sale occurs in Kansas and is subject to state and local sales tax. This rule applies regardless of how an item is shipped or delivered.

If a Kansas retailer makes delivery to an out-of-state address by the US Postal Service, by common carrier such as UPS, or on the retailer’s truck or on the truck of the retailer’s agent, the sale is regarded as taking place in the state of delivery and is not subject to Kansas tax. When an out-of-state resident picks up something in Kansas, delivery occurs here and the sale is subject to state and local sales tax. These delivery rules makes a delivery to a contract carrier taxable when the carrier is acting as the buyer’s agent.
While the place of delivery fixes the point of sale for purposes of the commerce clause, delivery does not fix the point of sale for purposes of determining which local sales tax applies. The Kansas legislature has determined that the taxing jurisdiction of the vendor should receive the tax proceeds from the vendor’s sales to help pay for police and fire services, and for other governmental services that benefit the business. Accordingly, when you ship goods from your place of business to a Kansas purchaser, you must collect the local sales tax that is in effect at your place of business plus the state sales tax. If a local sales tax is not in effect at your place of business, no local sales tax is due on your in-state sales. As will be discussed in Paragraph I, Subsection 2, special rules apply when you make sales from temporary locations in other taxing jurisdictions. Examples of temporary locations include booths at fairs and home shows, and door-to-door selling.

Taxation is determined without regard to whether an order is placed by telephone, in writing, over the internet, or by other means. As discussed above, the place of delivery and the mode of shipment determine the ability of Kansas to tax a sale.

Tax Base. The tax base for taxable sales includes all shipping, delivery, and handling charges. The definition of “selling price” includes “freight and transportation charges from the retailer to the consumer.” *K.S.A. 79-3602(g).*

Paragraph I, Sub. 2. The department’s Business Application Form asks each applicant if he or she intends to make sales from temporary locations. If the applicant indicates that such sales will be made, the department will issue a 112 registration number to the business and provide the business with special sales tax return forms. The registration number and special return forms allow a business to report sales from their permanent location and from any temporary locations, such as craft shows, trade shows, flea markets, and fairs. Local tax is due based on the location where the sale is made. This includes sales made door-to-door.

You also ask about your reporting duties for other states. As you are aware, you must contact the state revenue department of each state where you do business. These states will advise you of your tax reporting duties. As a general rule, you should contact a state if you use your own vehicles to deliver items into that state, operate at trade shows or sell door to door there, or have an agent or other representative that operates within the state. Once you have physical presence with a state, you must collect their tax on interstate sales shipped from Kansas to their residents as well as on the sales made within their borders.

Paragraph II. Kansas requires businesses to secure and display a certificate of registration for each permanent business location. Thus, a sole proprietor or other retailer who conducts business at more than one location must secure a registration certificate for each place of business.

A retailer may elect to file a return for each location or to file a combined return that covers all locations. A retailer normally makes this election by checking the appropriate box on the Business Application Form when applying for a registration certificate for the new location. Businesses that do not make this election may apply to the department for permission to file combined returns at a later date. If you wish to apply for permission to file a combined sales tax return, please contact our Tax Registration Section at (785) 296-4460.

Paragraph III, Sub. 1. These questions involve the taxability of backhoe services done at a residence. The 1998 Kansas legislature exempted residential repair and remodeling services. Department Notice 98-02 explains the implementation of these changes. A copy of the notice is enclosed.

Because of the new law, backhoe services done at a residence are not subject to tax. Please note that Notice 98-02 identifies what qualifies as a residence and provides an apportionment method when a residence has mixed residential and commercial use. This exemption extends to apartments, nursing homes, dormitories and other similar place where people reside. The exemption is not limited to single family homes, as your letter seems to suggest.

Paragraph III, Sub. 2. These questions involve the taxability of backhoe services done at a business. These services are subject to tax unless they are separately billed or separately stated as a line item on a bill. This means that charges for backhoe work may be exempted by separately billing them or by billing them as a separate line item on a bill that involves excavation work and installation or repair services. A billing for backhoe services for excavation only, that does not involve any installation services, is considered to be separately billed and exempt. Please give me a call at (785) 296-4008, if you have any additional questions that you wish to discuss.

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,

Thomas E. Hatten
Attorney/Policy & Research

Enclosure

**Date Composed: 09/02/1998 Date Modified: 10/10/2001**