**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-1999-164** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Labor services performed to install a dome roof on top of an existing storage tank.** |
| **Keywords:** |  |
| **Approval Date:** | **07/26/1999** |

**Body:**

Office of Policy and Research

July 26, 1999

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Re: Kansas Sales Tax

Dear XXXXX:

Your correspondence of April 28, 1999, has been referred to me for response. Thank you for your inquiry.

Your letter indicates your company is engaged in the installation of a dome roof which will be installed on the top of an existing storage tank in XXXXX, Kansas. Engineering design and fabrication work will be performed at your facility in XXXXX, Texas. The fabricated product will be shipped to XXXXX by a common carrier. Your factory-trained installers will go to the job site to install the dome roof.

You indicate it is your understanding the cost of raw materials will be taxed as a use tax. You inquire, however, as to whether the labor services will be subject to tax and, if so, the rate of tax. You note the contract amount is in excess of $10,000.

The Kansas retailers’ sales tax is imposed by K.S.A. 79-3603. Subsection (p) of the statute imposes sales tax on:

(p) the gross receipts received for the service of installing or applying 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, the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence or the construction, reconstruction, restoration, replacement or repair of a bridge or highway.
For the purposes of this subsection:
(1) “Original construction” shall mean 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;
(2) “building” shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;
(3) “facility” shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or of any municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility; and
(4) “residence” shall mean only those enclosures within which individuals customarily live;

Based on the information provided in your letter, which indicates you have entered Kansas and are performing taxable services here, installation of the dome roof will not qualify for an exemption from sales tax as original construction. As a result, the labor services performed in installing the dome roof will be subject to state sales tax at the rate of 4.9%, together with local sales tax at the rate of 1.75%, for a total of 6.65%. Further guidance is found in K.A.R. 92-19-66b, a regulation which interprets the statute. The regulation provides, in subsections (b) and (c):

(b) The taxable base for all contracts involving the application or installation of tangible personal property shall be the difference between the contract price and the cost of material, supplies, and payments to subcontractors, including sales or compensating tax paid by the contractor on the materials, supplies, and subcontractor charges purchased by the contractor to complete the contract.
(c) Each contractor, subcontractor, or repairman who does not separately state the amount of sales tax for services performed in that person’s contract, bid estimates, customer billings, or other evidence of the transaction shall state in the document that all applicable sales taxes are included in the selling price. If the statement does not appear in the contract, bid estimate, billing, or other evidence of the transaction, it shall be presumed that the sales tax was not charged to the consumer. Each retailer shall carry the burden of proving that the sales tax was charged to the consumer and properly remitted to the state.

I trust this information is of assistance. If I can be of further service, please feel free to contact me.

Sincerely,

Jim Weisgerber
Attorney
Tax Specialist

JW:jw

**Date Composed: 08/04/1999 Date Modified: 10/11/2001**