**Private Letter Ruling**

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| **Ruling Number:** | **P-2002-046** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Gross receipts from the providing of cleaning services.** |
| **Keywords:** |  |
| **Approval Date:** | **06/11/2002** |

**Body:**

Office of Policy & Research

June 11, 2002

XXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXXX

Dear XXXXXXXXXXX:

The purpose of this letter is to respond to your letter dated April 20, 2002. In it, you request advice on the application of Kansas retailers’ sales tax on the gross receipts from the providing of cleaning services.

In your letter you stated in pertinent part:

XXXXXX is requesting a private letter ruling. On April 18, 2002 XXXX, Inc. received a letter from XXXXXXXXXX requesting sales tax refunds we had charged in the past. Enclosed is the letter. The specific invoices are dated 1-98 through 7-2001.

XXXXXX has been doing business with XXXXXXXXXXXXX since 11-86. They are our only customer. We have been charging sales tax and remitting it to the state of Kansas since we were under the assumption that we provide a service and therefore required to collect sales tax. We have never received any written or verbal communication prior to this letter that we were in error to do so. Because of the letter received we are now in doubt and would like to have clarification in this matter not only to retain our only customer but to continue to follow the letter of the law.

XXXX picks up pans, frames, racks, and etc. from XXXXXXX in our own truck and takes them to our place of XXXXXXXXXXXX. where they are placed in large vats to soak. After various specific times depending on the items they are dried and coated with oil. They are then delivered to XXXXXXXXX. We comply with all city discharge standards and a have a permit from the city of XXXXXXXXX. All discharges are tested by a separate agency and periodically XXXXXXXX pumps out the tanks.

We hope that this has provided you with a description of our business since its inception to the present and that you will respect our right to privacy for the sake of competition in the work place. Once again we need this ruling to continue to service our only customer and still comply with the sales tax rules of Kansas.

The service described in your letter is not subject to Kansas retailers’ sales tax.

Your customer is due a refund of sales taxes paid in error. I have enclosed a form for that purpose.

The following paragraphs explain the Department’s rationale.

K.S.A. 79-3603(q) imposes a sales tax on, “the gross receipts received for the service of repairing, servicing, altering or maintaining tangible personal property . . . which when such services are rendered is not being held for sale in the regular course of business, and whether or not any tangible personal property is transferred in connection therewith. The tax imposed by this subsection shall be applicable to the services of repairing, servicing, altering or maintaining an item of tangible personal property which has been and is fastened to, connected with or built into real property”

In Re Tax Appeal of R & R Janitor Service, 9 Kan. App. 2d 500, 505 (1984) (“Maintaining” is keeping in repair or replacing, and is not synonymous with "cleaning").

The Court stated in part:

“R & R Janitor Service performed various cleaning services such as vacuuming, dusting, cleaning bathrooms, washing windows, and emptying trash. We find that a requirement in an ordinance of a duty ‘to maintain’ does not impose a duty of keeping siphons clean, since ‘to maintain’ is to ‘keep in repair or replace.’ Janitor work is not maintenance under a statute designating a fund for ‘purchasing, constructing, repairing and maintaining buildings for public school purposes; maintenance meaning holding, keeping or preserving them in their existing state or condition.’ The Nevada court held provisions in a contract for ‘repair and maintenance’ did not require parties to keep alleys clean, but did require keeping the alley's surfaces in their original condition. Cleaning services do not constitute ‘servicing or maintaining an item of tangible personal property which has been fastened to, connected with our built into real property’ within the meaning of that statute.”

K.S.A. 79-3606(n) exempts from sales tax: "all sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the providing of services or the irrigation of crops for ultimate sale at retail within or without the state of Kansas; and any purchaser of such property may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, irrigation and in providing such services."

The following uses of tangible personal property are not exempt from sales tax: shipping, repairing, servicing, maintaining, cleaning the equipment and the physical plant, and storing.

This private letter ruling is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to make 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 private letter ruling.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 06/18/2002 Date Modified: 06/18/2002**