**Private Letter Ruling**

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| **Ruling Number:** | **P-2004-037** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Food service related products.** |
| **Keywords:** |  |
| **Approval Date:** | **06/30/2004** |

**Body:**

Office of Policy & Research

June 30, 2004

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Dear XXXXXXXXXX,

This is a formal response to your letter dated April 21, 2004. In your letter you listed a number of products and asked which would be subject to Kansas retailer’s sales tax.

Kansas sales tax law imposes tax on the sale of tangible personal property and enumerated services. KS.A. 79-3603(a) imposes sales tax on “the gross receipts received from the sale of tangible personal property at retail within this state.” Sales of items labeled with a “T” fit into this enumeration and are thus taxable.

K.S.A. 79-3606(m) provides a tax exemption for “all sales of tangible personal property which become an ingredient or component part of tangible personal property or services produced, manufactured or compounded for ultimate sale at retail within or without the state of Kansas; and any such producer, manufacturer or compounder may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for use as an ingredient or component part of the property or services produced, manufactured or compounded.”

An “ingredient or component part” is “tangible personal property which is necessary or essential to, and which is actually used in and becomes an integral and material part of tangible personal property or services produced, manufactured or compounded for sale by the producer, manufacturer or compounder in its regular course of business” and includes “containers, labels, shipping cases, paper bags, drinking straws, paper plates, paper cups, twine and wrapping paper used in the distribution and sale of property taxable under the provisions of this act by wholesalers and retailers and which is not to be returned to such wholesaler or retailer for reuse.” K.S.A. 79-3602(p)(2).

Some of the items you listed fit into this ingredient or component part exemption. They are labeled with an “I.” The sale of these items by XXXXX to a restaurant would be exempt from Kansas retailer’s sales tax.

Finally, any items sold to a restaurant for resale would be taxable. The restaurant would be required to remit sales tax upon their resale. These items are labeled with an “R.”

The items you listed:

Application to Kids Club (given away) - T
Application to Kids Club (sold) - R
Balloons for Birthday Parties (given away) - T
Balloons for Birthday Parties (sold) - R
Birthday Party Invites (given away) - T
Birthday Party Invites (sold) - R
Birthday Party Kit (given away) - T
Birthday Party Kit (sold) - R
Carryout Bags - I
Carryout Containers - I
Coffee Stirrers - I
Complementary Crayons - T
Complementary Mints - I
Disposable Drinking Cups – I
Disposable Drinking Lids - I
Disposable Gloves - T
Disposable Placemats - I
Disposable Silverware - I
Foil (kitchen use) - T
Foil (wrap for sandwiches) - I
Hairnets/Beardnets (used by restaurants) - T
Ice cube bags (used by restaurant) - T
Kid’s Meal Toys - I
Kid’s Prizes - I
Newletters - T
Paper Dollies - I
Paper Crowns for Customers - T
Paper Liners for Baskets (for serving to customers) - I
Paper Napkins - I
Paper Table Covers - T
Plastic Cups to go - I
Plastic Plates - I
Plastic Steak Markers - I
Plastic Table Covers (disposable) - T
Plastic Table Covers (reusable) - T
Portion Cups (disposable) - I
Stir Sticks - I
Straws - I
Toothpicks - I
Trayliners (disposable) - I
Wetnaps – I

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 in the future by the operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or published revenue ruling, that materially effects this private letter ruling. If I may be of further assistance to you, please contact me at your earliest convenience at (785) 296-5330.

Sincerely,

Mark Ciardullo
Tax Specialist

**Date Composed: 07/06/2004 Date Modified: 07/09/2004**