**Private Letter Ruling**

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| **Ruling Number:** | **P-2008-012** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Kansas sales tax on equipment and materials purchased and used to construct a wind farm in Kansas.** |
| **Keywords:** |  |
| **Approval Date:** | **12/18/2008** |

**Body:**

Office of Policy & Research

December 18, 2008

XXXXX
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XXXXX

RE: Your letter dated September 19, 2008

Dear XXXXX:

Thank you for your recent letter. You ask how Kansas sales tax applies to equipment and materials purchased and used to construct a wind farm in Kansas. I have attached a copy of P-2006-013, which is a private letter ruling that the department issued in 2006. The advice given is up-to-date and is adopted as part of this ruling. You can rely on the advice given in this 2006 letter.

You ask several questions that do not appear to be directly addressed in P-2006-013. I will restate these questions and then answer them.

Will replacement parts purchased to keep the wind energy system operational be exempt?

ANSWER: P-2006-013 identifies the equipment purchases that are exempt under K.S.A. 79-3606(kk) and the equipment purchases that are not exempt. The second full paragraph on the second page states that the exemption for purchases by a wind farms is not a *carte blache* exemption and identifies various purchases that are taxable.

Parts for equipment would be taxed or exempted according to whether or not the initial purchase of the equipment was taxed or exempted under (kk). That is, if P-2006-016 states that the purchase of equipment is exempt under (kk), the purchase of parts for that equipment are also exempt. If P-2006-016 indicates that purchase of equipment is taxable, purchase of parts for that equipment are also taxable. Kansas sales tax is imposed on repair services, whether the repair is done to tangible personal property or to real property. Repair services would be taxed or exempted in the same way as parts, except as discussed in the *carte blanche* paragraph of P-2006-013.

Would the wind farms be exempt from charging sales tax on the electricity that is produced and sold at wholesale?

ANSWER: Yes. The Kansas sales tax act refers to "wholesale" sales as "sales for resale." These are exempt if the seller secures a resale exemption certificate (Form ST-21) from the buyer. In your case, the wind farm should secure a completed certificate from any utility, such as Westar Energy, that is buying electricity from the wind farm. If sales are made to a final user, such as a nearby manufacturing plant, the wind farm would be required to register as a retailer and collect sales tax on sales to the manufacturer in the same way as any other utility that sells gas or electricity to end users.

What are to KDOR form numbers of the required certificates that need to be completed?

ANSWER: Department Publication KS-1520 catalogs all of the department's exemption certificates. The first fifteen pages of the Publication discuss the various responsibilities that attach to issuing such certificates as well as different situations that require their use. I recommend downloading Publication KS-1520 from our web site, www.ksrevenue.org. The Table of Contents on page 2 lists the different certificates. You will need to secure the ST-28A -- Resale exemption certificate from the utility companies that buy the electricity, and issue the ST-201, Integrated Production Machinery & Equipment Certificate, to the seller when you buy the equipment that is exempt.

The second page of your letter lists equipment and materials that are used at a wind farm. The equipment and materials listed under the first six bullet points are exempt. P-2006-013 discusses how sales tax applies to purchases of the materials and supplies that are listed under the last three bullet points. P-2006-013 should be considered a part of this private letter ruling if it is ever reviewed by the department.

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 you have any additional questions, please call me at 785-296-3081.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

Attachment

**Date Composed: 12/23/2008 Date Modified: 12/23/2008**