**Private Letter Ruling**

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| **Ruling Number:** | **P-2011-001** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales tax on oil and dyed diesel.** |
| **Keywords:** |  |
| **Approval Date:** | **02/16/2011** |

**Body:**

Office of Policy & Research

February 16, 2011

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Dear XXXXXXXX:

We wish to acknowledge receipt of your recent inquiry regarding the application of Kansas Retailers’ Sales tax. You inquired regarding sales tax on oil and dyed diesel. You are a XXXXXXX retailer delivering bulk fuel, oil and various petroleum products into Kansas. Your inquiry states several different sales tax issues. These issues are listed below with response.

Issue #1 – The inquiry dealt with the Kansas Agricultural Exemption Certificate and sales of oil and dyed diesel fuel where the Kansas purchaser is an excavation company. You understand the customer does agricultural excavation work and believes the Kansas Agricultural Exemption Certificate applies to his business operation. Your questions are listed below.

Is his oil exempt from Kansas sales tax?
**Answer:**No. For the Kansas agricultural exemption it is not the buyer or the item itself that is exempt but rather how the item is used that may qualify for the exemption. Oil which is consumed in the non-highway operation of motor vehicles or excavation and construction equipment in connection with the construction of farm ponds, terraces, waterways, grading, landscaping and in the preparation of building sites, etc. is subject to sales tax or use tax. Only oil purchased for use in agricultural equipment engaged in the production of agricultural commodities such as tractors, combines, harvesters, etc. would be exempt.

Additionally the Kansas agricultural exemption applies only to purchases by someone actually engaged in the production of agricultural commodities. Included are farmers, ranchers, feedlots, etc. An excavation company that does work for farmers, ranchers, etc is not engaged in the production of agricultural commodities and does not qualify to use the Kansas agricultural exemption certificate.

Is his dyed diesel exempt from Kansas sale tax?
**Answer:**No. Motor fuels which are consumed in the non-highway operation of motor vehicles or excavation and construction equipment in connection with the construction of farm ponds, terraces, waterways, grading, landscaping and in the preparation of building sites, etc. are subject to sales tax or use tax. Only fuel purchased for use in agricultural equipment engaged in the production of agricultural commodities such as tractors, combines, harvesters, etc. would be exempt.

Additionally the Kansas agricultural exemption applies only to purchases by someone actually engaged in the production of agricultural commodities. Included are farmers, ranchers, feedlots, etc. An excavation company that does work for farmers, ranchers, etc is not engaged in the production of agricultural commodities and does not qualify to use the Kansas agricultural exemption certificate.

What merchandise is he exempt from Kansas sales tax?
**Answer:**The Kansas agricultural exemptions apply only to anyone actually engaged in the production of agricultural commodities. Included are farmers, ranchers, feedlots, etc. An excavation company that does work for farmers, ranchers, etc is not engaged in the production of agricultural commodities and does not qualify to use the Kansas agricultural exemption certificate. Merchandise purchased for an excavation business is not an exempt agricultural purchase.

Issue #2 – The customer may do some commercial or residential excavation work. Is it correct that agriculture, commercial or residential excavation may matter in determining sales tax on labor charges but is not relevant to whether the oil or dyed diesel is subject to sales tax?
**Answer:**Correct. Equipment, materials and supplies, including oil or fuel, purchased by an excavation contractor is taxable.

Issue #3 – What farm use qualifies? Are both the type of power unit and type of work factors?
**Answer:**Two conditions must be met to claim the agricultural exemption. The buyer must first be engaged in farming or ranching; and the machinery and equipment must be used only in farming and ranching. For the purpose of a sales tax exemption farm machinery and equipment is generally defined as all machinery and equipment which is ordinary and necessary for the growing or raising of agricultural products. In order for an item to be exempt it must be used exclusively in farming, ranching, or agricultural production. If it is can be used for another purpose an exemption generally cannot be claimed. Many types of equipment are used in farming or ranching operation but not all qualify for the exemption. Exempt machinery generally includes things such are tractors, combines and other self propelled farm implements, but also includes machinery such as irrigation equipment, milking machines, etc. Examples of machinery or equipment which do not qualify for agricultural exemption would be pickup trucks, ATVs, lawnmowers, bulldozers, fencing materials, hand tools such as shovels, etc.

Issue #4 – You inquired that when dyed fuel is delivered in bulk you do not collect sales tax but the use tax is due from the end user. Does the same apply to oil?
**Answer:**Generally motor fuel purchased in bulk where its taxable or nontaxable use cannot be determined until it is actually consumed should be purchased without retailers’ sales tax. Persons buying motor fuel in bulk solely for taxable non-highway use should pay sales tax to their supplying dealer. Oil does not meet the same qualifications for taxable or nontaxable non-highway fuel and should be taxed even if sold in bulk unless the purchaser provides a properly completed Kansas Agricultural Exemption certificate.

Issue #5 – You asked for clarification on your responsibilities to Kansas as a retailer.

Are you ever required to question a customer about his use?
**Answer:**An exemption certificate relieves a seller from collecting sales tax from a purchaser as long as the certificate is accepted in good faith with no intent to fraudulently avoid collecting the tax. There are two general requirements for a seller to follow during this process. A seller should verify the identity of the person or entity presenting the exemption certificate. The seller should also maintain the completed exemption certificate as part of your sales tax records for at least three years. However, if your customer or the purchase does not fit the definition or the exempt examples listed on the certificate, the sale is most likely not exempt.

When, if ever, are you required to submit a copy of an exemption certificate?
**Answer:**Copies of exemption certificates should not be submitted to the Kansas Department of Revenue. The completed exemption certificate document should be kept in your files for at least three years to verify the sales made without sales tax. If you make recurring sales to the same customer you do not need to obtain an exemption certificate for each transaction. A copy of the exemption certificate in your files will be sufficient documentation for ongoing sales to the same entity. However you would need to obtain a new exemption certificate if there are no transactions with the entity for a period of 12 months.

When, if ever should you not honor an exemption certificate?
**Answer:**An exemption certificate relieves a seller from collecting sales tax from a purchaser as long as the properly completed and signed certificate is accepted in good faith with no intent to fraudulently avoid collecting the tax.

Kansas Administrative Regulation 92-19-25b states:
“(a) All retail sales shall be presumed to be taxable. The burden of proving that a sale is exempt from tax shall be on the vendor, unless the vendor takes an exemption certificate from the purchaser in good faith.
(b) A vendor shall be deemed to have accepted an exemption certificate in good faith when the vendor maintains the completed certificate as part of its records, has ascertained the identity of the person or entity who presents the certificate, and has not been shown by the department by a preponderance of evidence to have had knowledge that the presentation of the certificate was improper.”

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,

Jack Smith
Policy and Research

**Date Composed: 02/21/2011 Date Modified: 02/21/2011**