**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-2014-004** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Taxable Sales by Schools and Educational Institutions** |
| **Keywords:** |  |
| **Approval Date:** | **09/10/2014** |

**Body:**

Office of Policy & Research

September 10, 2014

XXXX
XXXX
XXXX

RE: Your recent e-mail

Dear XXXX:

Thank you for your recent e-mail. In it, you state:

I just spoke to you regarding sales tax on t-shirts that our school would purchase. The students then purchase the shirts at the cost in which the school paid.

Our conversation led me to believe that this would be a taxable transaction.

At the same time, I was discussing the issue with you, our HS secretary called in and visited with a lady in your office and got a different answer stating that since the school was not making a profit then sales tax would not apply.

Can you please clarify this for me?

K.S.A. 79-3602(ii) provides: "(ii) 'Retailer' means a seller regularly engaged in the business of selling, leasing or renting tangible personal property at retail or furnishing electrical energy, gas, water, services or entertainment, and selling only to the user or consumer and not for resale." Kansas schools, including USD ABC, are required to register with the department as retailers and collect and report sales tax on the goods, admission charges, and enumerated services that they sell at retail. See *State Tax Comm. v. Board of Education,* 146 Kan. 722, 73 P.2d 49 (1937).

Publication KS-1550, *Kansas Tax Guide for Schools and Educational Institutions,* explains:

**TAXABLE SALES BY SCHOOLS AND EDUCATIONAL INSTITUTIONS**

The following is a representative but not all-inclusive list of the types of sales by schools and educational institutions which are generally subject to sales tax. . . .

***RETAIL SALE OF GOODS AND MERCHANDISE*** (includes renting or leasing of property)

Athletic equipment & shoes
Bake sales, doughnuts
Balloons
Books, workbooks and manuals (obsolete & others)
Class jewelry, pictures and rings (if the tax is not collected and remitted by the firm selling the merchandise)
**Clothing - T-shirts, etc.**
Concession sales (candy, hot & cold drinks, ice cream, nachos, popcorn, etc.)
Corsages, flowers and plants
Family and individual portraits
Fireworks
Food and beverages
Freight or delivery charges (when included in cost of taxable items)
Graduation gown rentals
Graduation items (announcements, charms, mugs, robes, tassels, etc.)
Health supplies
Home economics projects
Jewelry
Lock rentals (separate from locker rental)
Magazine subscriptions
Meals (if open to the general public)
Musical instrument rentals
Newspapers and periodicals
Party food items
Printing and duplicating charges
Reproduction of printed materials
School pictures
School supplies (pencils, paper, notebooks)
School supply kits
Shop & art projects
Sporting goods, shoes, sports equipment, etc.
Storage sheds
Tote bags
Towel rentals
Uniforms
Upholstery sales & repairs
Vending machine sales (if machine is owned by the school)
Yearbooks

**PROVIDING TAXABLE SERVICES**

Auto and truck repair
Car washes
Repair of tangible personal property
Vehicle body work

**ADMISSIONS/TICKETS**

Activity tickets
Admissions (tickets) to school events, including basketball games, carnivals, concerts, dances, football games, fun nights, movies, plays, special events, swim meets, track meets, wrestling meets and other sporting events, etc.
Admission to amusement parks or rides, museums and planetariums
Admission to fund-raising events including auctions, chili suppers, haunted houses, home tours, and golf or tennis tournaments.
Lyceum tickets to lectures and other public programs
Teacher or student banquets (receipts are exempt if the banquet is held at an outside restaurant which charges the tax)*(underlining added).*

Publication KS-1550 and the Kansas Supreme Court decision in *State Tax Comm. v. Board of Education* clearly shows that USD ABC is required to charge and collect sales tax when it sells t-shirts to students. The Publication also shows the school received incorrect verbal advice from the department that suggested the sales are not taxable. K.A.R. 92-19-59(b) instructs: "A retailer, consumer, or other person shall not rely upon a verbal opinion from the department of revenue. Only a written private letter ruling issued to a retailer that concerns the retailer’s collection duties shall bind the department."

As Publication KS-1550 shows, a school's sales and rentals to students are taxable even when they are made to accommodate student participation in school activities. See *Publication KS-1550, and its list of taxable school sales quoted above; State Tax Comm. v. Board of Education,* supra.The school is a registered retailer and its sales and rentals are taxable regardless of whether the school realizes a profit on them.

Most questions that USD ABC will encounter about the taxability of its retail sales to students and employees are answered by Publication KS-1560, which lists representative taxable transactions. Please call Policy & Research if you have any questions about the school's collection duties that are not answered by the publication.

Sincerely,

Thomas E. Hatten

**Date Composed: 09/16/2014 Date Modified: 09/16/2014**