**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-133** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sale, repair, and maintenance of boilers, burners and related equipment.** |
| **Keywords:** |  |
| **Approval Date:** | **06/08/1999** |

**Body:**

Office of Policy and Research

June 8, 1999

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Re: Kansas Sales Tax

Dear XXXXX:

Your correspondence of March 23, 1999, has been referred to me for response. Thank you for your inquiry.

Your letter indicates you are a small company involved in the sale, repair, and maintenance of boilers, burners and related equipment. Sometimes the equipment you sell or work on is used for heating the building and some times it is used for processing or manufacturing of a plant or industry. You keep a small inventory, but most of the larger parts and equipment, which you are able to purchase from the factory or warehouse without paying sales tax, are purchased as needed for the individual job.

Your letter goes on to note you sometimes only sell parts to a company which has its own maintenance crew. Sometimes, when you both sell and install the parts, you give your customer an itemized invoice showing a charge for labor and a charge for each individual part. Other times your invoice reflects only the total price of the job.

By your letter you indicate you believe you are a retailer/contractor, and that your problem in understanding the Kansas Law comes only in the case of those companies or institutions that have exemption certificates. They purchase their equipment and our services directly from you and you are paid with their personalized checks. You ask whether you can always sell services and labor as a retailer, and whether such a sale can be made tax exempt to those who have valid exempt certificates. You note your greatest concern is what to do in the case of public schools, county court houses, post offices, municipal buildings and nonprofit hospitals.

The manner in which a retailer/contractor deals with an exempt entity such as a political subdivision, nonprofit hospital, or a public or private school is much different than the manner in which either a retailer or a contractor deals with them. A retailer who makes a sale to an exempt entity can simply accept an exemption certificate. A contractor who provides service for an exempt entity can also simply accept an exemption certificate.

When a retailer/contractor deals with an exempt entity, however, the situation is quite different. As a retailer, the retailer/contractor must self-assess sales tax on any materials it uses. The controlling statute, K.S.A. 79-3603(l), provides for the imposition of sales tax on:

(l) the gross receipts received from the sales of tangible personal property to all contractors, subcontractors or repairmen of materials and supplies for use by them in erecting structures for others, or building on, or otherwise improving, altering, or repairing real or personal property of others;

In order to avoid the conundrum created by the self-assessment requirement of K.S.A. 79-3603(l), a retailer/contractor can sell both materials and labor tax exempt to an exempt entity by use of a project exemption certificate. Once the project exemption certificate is obtained, the “contractor” can purchase materials tax exempt on behalf of the exempt entity. This exemption extends to a retailer/contractor who purchases materials from itself.

For your information, I have enclosed a copy of a booklet which deals with Kansas exemption certificates. On pages 8 and 9 you will find a discussion of the use of project exemption certificates. A form to request a project exemption certificate is also contained in the booklet.

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.

I trust this information is of assistance. If I can be of further service, please feel free to contact me.

Sincerely,

Jim Weisgerber
Attorney
Tax Specialist

JW:jw

Enclosure: Kansas Exemption Certificates Booklet

**Date Composed: 07/06/1999 Date Modified: 10/11/2001**