**Private Letter Ruling**

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| **Ruling Number:** | **P-2000-038** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales of excavated materials such as sand, gravel, and rock and the hauling charges associated with delivery to a job site.** |
| **Keywords:** |  |
| **Approval Date:** | **08/07/2000** |

**Body:**

Office of Policy & Research

August 7, 2000

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RE: Your letter of August 4, 2000

Dear XXXX:

I have been asked to answer your letter that we received last week. In it, you explain that your company excavates sand, gravel, and rock that you sell at retail. You ask if sales of the excavated materials are subject to sales tax and if the charges for hauling the materials to a job site are subject to sales tax. You enclosed a copy of a 1992 letter from the department that states that the sales and hauling charges are taxable

The 1992 letter continues to be correct. Sales of sand and gravel are sales of tangible personal property. When sand, rock, minerals, trees, crops, trees, sod, and other items that are affixed to or part of real property are severed from real property, they become tangible personal property. Once something has become tangible personal property, its sale in Kansas is subject to the sales tax act.

When sand and gravel is sold by an excavation company, the sales normally are taxable retail sales for the buyer’s use or consumption. This is always the rule when you sell sand or gravel to a contractor for use on a construction project. Sales to contractors are taxable sales by statute. The only exception to this is when the owner of the project has secured a project exemption certificate that is presented to you by your customer. Projects that are exempt under project exemption certificate usually are owned by Kansas cities and counties, schools, colleges and universities, hospitals, and churches. Private businesses can also secure project exemption certificates under Kansas economic development laws.

When an item is sold at retail, the shipping or hauling charges that are billed by the seller to the buyer are subject to sales tax. This requirement is the result of a statutory definition. K.S.A. 79-3602(g) provides:

"Selling price" means the total cost to the consumer exclusive of discounts allowed and credited, but including freight and transportation charges from retailer to consumer.

This statutes shows that the tax base that you use to charge tax to your customers is the sum of the charges for the materials and the hauling that you bill. If your customer picks up the gravel or sand in its own truck, the sale takes place when you deliver the sand into the buyer’s truck. Thus, there would be no hauling charges that would be part of your sale.

Some of the recent confusion may be the result of a 1998 exemption for residential repair and remodeling. While various labor services are now exempt for residential remodeling, hauling charges billed by you are considered to be an integral part of your sale of materials. Sales of materials to contractors continue to be taxable. Since the hauling charges are considered to be part of the selling price for the sale, they continue to be subject to sales tax.

I hope this clearly explains the law. If not, please call me to discuss this matter further. My number is (785) 296-3081. This is a private letter ruling and 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,

Thomas E. Hatten
Attorney/Policy & Research

**(Follow-up letter associated with August 7th letter.)**
Office of Policy & Research

August 28, 2000

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XXXXX

RE: Your telephone response to my letter of August 7, 2000

Dear XXXXX:

This is a follow-up letter to the letter that I sent you earlier this month. In that letter, I advised you that delivery charges billed by an excavating company for delivering materials to contractor at a job site are taxable as part of the selling price. This advice continues to be correct. You called me after you received my letter and discussed a different set of facts. Because of my telephone conversation with you, I now understand that you really are asking how Kansas sales tax applies to a number of different transactions. Accordingly, this letter will explain the basic taxing concepts that control taxation in this area and then discuss how sales tax applies to a number of different fact scenarios.

There are four basic concepts that control how tax applies in this area. The first, as I explained in my first letter, is that sales of sand and gravel are sales of tangible personal property. When sand, rock, minerals, trees, crops, trees, sod, and other items that are affixed to or part of real property are severed from real property, they become tangible personal property. Once something has become tangible personal property, its sale in Kansas is subject to the sales tax act.

The second controlling concept is that sales to Kansas contractors are sales to final consumers. K.S.A. 79-3603(l). Sales to contractors are taxable sales for consumption because contractors convert materials into real property --- they do not resell them as tangible personal property.

The third concept is that shipping and delivery charges are part of a retail sale in Kansas. This requirement is the result of a statutory definition. K.S.A. 79-3602(g) provides:

"Selling price" means the total cost to the consumer exclusive of discounts allowed and credited, but including freight and transportation charges from retailer to consumer.

The forth concept is that a sales takes place when tangible personal property is delivered to the buyer. In the case of sand and gravel, the sales may occur at the place of business of the retailer, if the sand or gravel are picked up by the buyer at the retailer’s business, or at the job site, if the retailer delivers the materials to the job site.

These four concepts control the application of tax in this area. To reiterate, (1) sales of materials severed from real property are taxable; (2) sales of materials to contractors are taxable; (3) the selling price for tangible personal property include shipping and delivery charges; and (4) a sale takes place where the buyer accepts delivery of the goods.

**Scenario 1) An excavator agrees to sell materials to a contractor who has contracted with a homeowner or another contractor to install the materials as fill around the basement of a new house.** In this case, the sale to the contractor is a taxable sale and the tax base is the total amount charged to the contractor, including delivery charges. When the *contractor* takes delivery in his own truck at the *vendor’s place of business* and delivers the materials to the job site, the tax base is the amount billed to the contractor by the vendor. Since the vendor does not deliver the materials, there are no shipping or delivery charges from the vendor to the buyer that can be taxed. The sales takes place at the vendor’s place of business. However, when the vendor delivers the materials to the job site, the tax base for the sale of materials includes the delivery charges. The sale takes place at the point of delivery. Note that in both case, the sale is considered to takes place when delivery is made to the buyer. In one case, there are no delivery charges. In the other, the delivery changes from the vendor to the buyer are taxed as part of the sale.

**Scenario 2) An excavator agrees to provide the correct materials and install those materials as fill around the basement of a new house.** In this case, the excavator is acting as a contractor or as a contractor/retailer. In either case, the excavator is required to accrue tax on his cost and report it to the department. Delivery charges would not be taxed since tax should be based on the excavator’s cost to obtain the materials. If an excavator who operates as a contractor/retailer needs to buy materials from another excavator, the excavator may claim resale exemption but is required to do the proper accounting and accrue the tax correctly.

**Scenario 3) An excavator agrees to provide the correct materials and install those materials as fill around the basement of a existing commercial building.**In this case, the total billing charge to the building owner or contractor are taxable. Since delivery charges are part of the billing, the delivery charges would be taxed as part of the gross receipts for a construction contract that involves taxable labor services.

**Scenario 4) An excavator agrees to sell materials for or do construction work for an entity that holds a project exemption certificate.**A project exemption certificate exempts the sale of materials that will be incorporated into the real property of the entity that holds the project exemption certificate. It also exempts the labor services that will be performed. Thus, charges for sales of materials or for their sale and installation would be exempt. Please note that , when sand and gravel is sold by an excavation company, the sales normally are taxable retail sales for the buyer’s use or consumption. The only exception to this rule is when the contractor/purchaser holds a project exemption certificate.

Some of the recent confusion may be the result of a 1998 exemption for residential repair and remodeling. While various labor services are now exempt for residential remodeling, hauling charges billed by you for the sales of materials are considered to be part of the sale of the materials. Thus, any delivery charges billed to a third party contractor or the home owner continue to be taxable as part of the sale of the materials --- not as a separate service that is exempt. As discussed, this rule does not control where the excavator is acting as a contractor. In such a case, the contractor/ excavator is viewed as the consumer of the materials and owns the property that is used on the project to improve real property before it is shipped to the job site. Since the contractor/excavator owns the materials before they are delivered and installed, the delivery charges are not part of a sales and are not taxed.

I hope this new letter clearly explains the law for all the situations that you are involved in. If not, please call me to discuss this matter further. My number is (785) 296-3081.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 10/02/2000 Date Modified: 10/11/2001**