**Opinion Letter**

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| **Letter Number:** | **O-2006-005** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales tax on property tax for equipment charged to a lessee by a lessor.** |
| **Keywords:** |  |
| **Approval Date:** | **09/11/2006** |

**Body:**

Office of Policy & Research

September 11, 2006

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RE: Your e-mail received on August 31, 2006

Dear XXXX:

Thank you for your recent e-mail. You ask if Kansas sales tax can be lawfully imposed on a line-item charge to you for the property tax that a lessor paid on equipment being leased to you. The answer is yes. When property tax paid by a lessor is re-billed to a lessee as a line-item charge, the lessor is required to charge Kansas sales tax on it. Under Kansas law, this billing is both lawful and correct.

The billing of sales tax on property tax line-item charges generates the most contentious complaints that the department fields in its administration of the sales tax. As you note, your invoice reflects the taxing of a tax. This offends most taxpayers. However, if you review the underlying lease agreement, you will see that your company agreed to reimburse the lessor for any property tax the lessor is required to pay on the property being leased. Because your company agreed to reimburse the lessor for the property taxes it pays, that amount is part of what you contracted to pay for the leased goods. This agreed-to amount is the tax base for the leased goods. Since this amount is the tax base, it is subject to sales tax even when it is stated as a separate line-item charge for taxes.

When a retailer determines the retail selling price for goods or services, the retailer fixes the selling price of its goods or services high enough to cover its overhead costs and to provide a margin of profit. A retailer's overhead costs include the taxes it pays, such as property tax, income tax, sales taxes paid on its purchases, motor fuel taxes, withholding taxes, and so forth. There are no complaints when these taxes are hidden in the selling price of a retailer’s goods. This is not the case when property tax is stated as a separate line-item amount and then taxed. The specter of a tax on a tax is always raised when a retailer bills a tax that it paid as separate line-item charge on a customer invoice.

Tax on a tax is an aspect of double taxation, which is an issue that has been litigated continuously since this country was founded. This extensive litigation has produced a fairly straightforward test for double taxation. The test is found in *Gurley v. Rhoden*, 421 US 200 (1975). For the kind of transaction here, double taxation does not occur when a business invoices a tax that it paid as a line-item amount and then charges the consumer an excise tax on the total invoice amount. In other words, double taxation does not result simply because a business re-bills a tax that it paid as a line-item charge rather than as an overhead cost that is hidden in the selling price of goods. In your case, the property owner --- the lessor --- owes the property tax to the county treasurer. *See K.S.A. 79-303; K.S.A. 79-2101.* To the lessor, this is a cost of doing business that good business practices dictate should be recovered from the lessee. Since this amount is part of the total amount being charged to you for the lease, it is subject to sales tax. A review of your lease agreement will show that you agreed to reimburse the lessor for any property tax that the lessor is required to pay.

In addition, the legality of taxation of line-item property tax charges is codified in a Kansas administrative regulation, K.A.R. 92-19-55a(b)(3). It provides:

Sales tax shall be computed on the total amount of each lease payment charged to the lessee without any allowance for insurance, damage waiver fees, property taxes, maintenance, service, repair, pickup, delivery, and other handling charges, administrative charges, late fees, fuel charges, or other charges or expenses whether paid by the lessor or lessee. Any such charges or expenses shall be considered to be part of each lease payment regardless of whether the charges are segregated on the same bill or whether separate contracts are entered into for the lease or rental of the property and for the payment of these charges or expenses. Any payment for the cancellation of the lease shall be taxable as part of the final lease payment under the lease contract.

I hope that this adequately explains why something that may appear to be highly improper is lawful. Since the property tax paid by the lessor is part of the tax base or selling price for the lease, charging sales tax on the property tax amount that is being re-billed to you was appropriate. *See K.S.A. 2004 Supp. 79-3602(ll).*

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 09/13/2006 Date Modified: 09/13/2006**