**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-157** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **FEMA's (Federal Emergency Management Agency) Project Impact.** |
| **Keywords:** |  |
| **Approval Date:** | **07/23/1999** |

**Body:**

Office of Policy and Research

July 23, 1999

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Re: Kansas Sales Tax

Dear XXXXX,

Your correspondence of July 6, 1999, has been referred to me for response. Thank you for your inquiry.

Your letter indicates XXXXXXXXX has been selected as the first community in Kansas to participate in the Federal Emergency Management Agency’s Project Impact. As part of Project Impact, XXXXXXXXX has received $500,000 in grant funds to be used for the development of public / private partnerships which will undertake activities to create a more disaster resistant community. One of the activities selected by the Steering Committee and Commissions to receive funding from the grant was the promotion of Emergency Alert Sentinel radios for residences, businesses, schools, etc.

XXXXXXXXX purchased the radios with the grant funds at a reduced price through a partnership with the manufacturer. The radios are being sold by XXXXXXXXX at cost to individual residents and businesses to promote their use in the community and to create awareness of Project Impact. The radios are being sold below cost or being donated to schools and similar institutions.

By your letter you ask whether sales tax should be collected on the sale of these weather alert radios by XXXXXXXXX.

Definitions of terms used in the Kansas retailer’s sales tax act are found in K.S.A. 79-3602. Subsection (d) of the statute defines the term “retailer.” The statute provides:

(d) “Retailer” means a person regularly engaged in the business of selling 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.

The statute is interpreted, in part, by Kansas Administrative Regulation (K.A.R.) 92-19-47. The regulation provides:

**92-19-47. “Retailer”**(a) “Retailer” means any person regularly engaged in the business of selling tangible personal property at retail to the final user or consumer, and not for resale. The principal nature of the seller’s business operation is immaterial in making the determination of whether a person is a retailer. The controlling factors are:
(1) whether the sale is to the final user or consumer; and
(2) whether the transaction is a sale of tangible personal property or service which is subject to sales tax.
(b) Sales tax is imposed on retail transactions not exempted by law. Any person generally providing a service which is not taxable is deemed to be a retailer when the person engages in the sale of tangible personal property or taxable services at retail to the final user or consumer and which are not for resale purposes.
(c) “Regularly engaged in the business” means the periodic, habitual or recurring sale of tangible personal property at retail or services subject to sales tax. Any person is deemed to be a retailer if the person sells tangible personal property at retail or provides taxable services in the normal course of its business operations, notwithstanding the fact that the sales may be few or infrequent, or that retail sales may comprise a small portion of the total gross receipts. If any person acquires tangible personal property for the purpose of resale, the person acquiring the property is deemed to be a retailer and shall collect sales tax on the gross receipts received from the retail sale thereof. (Emphasis added.)

Based on the information provided in your letter, XXXXXXXXX acquired the radios in question for the purpose of resale. As a result, XXXXXXXXX is deemed to be a retailer and is required by law to collect and remit sales tax. For your convenience, I have enclosed a copy of our Kansas Business Tax Application Booklet which will assist you in registering XXXXXXXX as a retailer.

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

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Enclosure: Kansas Business Tax Application Booklet

**Date Composed: 08/03/1999 Date Modified: 10/11/2001**