**Private Letter Ruling**

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| **Ruling Number:** | **P-2001-042** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Residential or commercial plumbing.** |
| **Keywords:** |  |
| **Approval Date:** | **05/14/2001** |

**Body:**

Office of Policy & Research

May 14, 2001

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RE: TTTTTTTTTTTTTTTTTTTT

Dear Mr. TTTTTT:

We wish to acknowledge receipt of your letter dated April 25, 2001, regarding the application of Kansas Retailers’ Sales tax.

K.S.A. 2000 Supp. 79-3603(p) (1998 Senate Bill No. 493) exempts certain construction services that were formerly subject to Kansas sales tax. Effective July 1, 1998, services performed to install or apply tangible personal property are exempt from sales tax when the services involve the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence. This would include land improvements immediately surrounding the residence, such as the fountain or poolhouse. The mere fact that an exempt service is performed for a home association, would not subject the respective service to Kansas sales tax(es).

K.S.A. 79-3603(p) imposes a sales tax upon: “the gross receipts received for the service of installing or applying tangible personal property which when installed or applied is not being held for sale in the regular course of business, and whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate, except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building or facility, the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence or the construction, reconstruction, restoration, replacement, remodeling, restoration, renovation or reconstruction, restoration, replacement or repair of a bridge or highway. . .”

The department will construe the term ‘residence’ in K.S.A. 79-3603(p)(4) to include the land improvements that immediately surround the residence. This means the exemption for residential repair and remodeling services generally will be coextensive with the exemption for the original construction of the residence.

The new law does not change the taxation of sales of materials and supplies that are purchased for use in residential or commercial plumbing. These sales continue to be subject to state and local sales tax. This would include, but not be limited to the plumbing fixtures and materials, plus any shipping and handling charges invoiced from the material supplier.. Similarly, sales tax continues to apply to non-residential labor services, since the new exemption extends only to residences. Repair, maintenance, installation and application services remain subject to sales tax when done to tangible personal property.

It is the opinion of the Kansas Department of Revenue that plumbing labor services would not be subject to sales tax, if the labor services rendered are for a residence. All materials would be subject to the appropriate Kansas sales/use tax at the time of purchase, whether the respective materials are used at a residence or a commercial site. Additionally, your company would be obligated to continue collecting the appropriate Kansas sales tax(es) on all labor for non-residential jobs, unless the services are rendered in connection with the original construction of a building or a facility.

When a contractor purchases materials and supplies from an in-state retailer, the contractor must pay the retailer the appropriate Kansas state and local sales tax. When a contractor purchases materials and supplies from an out-of-state retailer who is registered to collect the compensating (use) tax for the state of Kansas, the contractor must pay the retailer the compensating (use) tax. If the out-of-state retailer is not registered with Kansas for compensating (use) tax purposes, the contractor must remit the compensating (use) tax directly to the state of Kansas.

The sales and compensating tax paid by your client should be passed off to their customers as a cost of the material. Therefore, your client would not be entitled to credit for any sales/use tax(es) paid on their material purchases.

This is a private letter ruling pursuant to K.A.R. 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This ruling will be revoked in the future by the operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or published revenue ruling, that materially effects this private letter ruling.

If I may be of further assistance, please contact me at your earliest convenience at (785) 296-7776.

Sincerely yours,

Thomas P. Browne, Jr.
Tax Specialist

TPB

**Date Composed: 05/15/2001 Date Modified: 10/11/2001**