**Private Letter Ruling**

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| **Ruling Number:** | **P-2003-014** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Photographic and video services and products.** |
| **Keywords:** |  |
| **Approval Date:** | **03/10/2003** |

**Body:**

Office of Policy & Research

March 10, 2003

XXXX
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XXXX

RE: Your letter dated February 11, 2003
Your File No. 915.00

Dear XXXX:

Thank you for your recent letter. I apologize for the fact that you had to send a follow-up letter to the one sent last June. The address used in the letters include "PO Box 12001." This is the department's address for tax returns and payments. Associates who open returns are charged with depositing tax payments as quickly as possible. While the earlier letter should have been forwarded to this office, using the address contained in the footer of this letter for policy questions should help to assure a more timely response in the future.

You represent XXXX. ("XXXX") XXXX is a Kansas company that provide photographic and video services and products. Customer include retailers, advertising agencies, and other businesses. You ask how XXXX should collect sales tax on its services and products. Most of your questions are answered in a Question and Answer for Photographers that was published last year. It states:

Question: How does sales tax apply to photographers and photofinishers?

Answer: (1) *Generally.* In Kansas, photographers and photofinishers are treated as retailers of photographs and other items purchased by their customers, including items produced to the special order of the customer. The photographer or photofinisher is required to collect and remit sales tax on the total selling price charged to the customer for the photographs or service. In determining the selling price, no deduction may be taken for charges such as sitting fees or for ancillary expenses such as travel time and related expenses, telephone calls, salaries or wages, models, and other similar expenses, whether or not these expenses are separately stated in billings to purchasers. Sales tax applies to the total charge for aerial photographs, security photographs, films, and similar items produced under a contractual agreement which includes design time and similar labor charges. As used here, photofinisher includes photo-refinishers.

(2) *Consumed-in-production and ingredient-and-component part exemptions*. Photographers who collect sales tax on sales of their work may claim exemption on the chemicals, paper, film, and other materials that become a component part of the photograph or that are directly consumed in developing the film and printing the photographs. If the developing or printing services are purchased from a third party, the photographer or photofinisher may claim resale exemption on those purchases. Because photographers routinely purchase consumables exempt from sales tax, charges for proofs and for sitting charges are subject to sales tax even if the client decides not to purchase a photograph.
The ingredient-and-component-part exemption is limited to items that are or that become a physical part of the print, film, and other property being sold and to the sacks, envelopes and other things that hold the property at the time of sale. The consumed-in-production exemption is limited to electricity, chemicals, and other property that is consumed in developing the film and producing the prints that are physically delivered to the customer. Other than film, the consumed-in-production exemption does not extend to the items listed in paragraph (1) or to makeup, cleaners, flashbulbs, batteries, electricity, and other items that are used when a photograph is taken.

(3)*Purchases for resale.* Photographers and photofinishers often operate retail stores and sell photo albums, picture frames, film, CD's, digital memory cards, cameras, camera cleaning supplies, and various other items to consumers. Like other retailers, photographers and photofinishers may claim a resale exemption when they purchase items that they intend to resell or that they intend to incorporate into products that they sell. To claim resale exemption, photographers and photofinishers should provide their vendor with a completed Resale Exemption Certificate, Form ST28A, that identifies the items they intend to resell.

(4) *Items purchased for use by a photographer or photofinisher.* Purchase of items by photographers and photofinishers for their own use are taxable. Taxable purchases include purchases of cameras, lenses, lights, screens, projection lamps and tables, stands, props, electricity, cleaners, and other property that a photographer uses or consumes in their business, other than those things that are directly consumed in developing film, printing photographs, or finishing or refinishing photographs. Kansas photographers and photofinishers who buy items from retailers in other states are required to register for, report, and pay Kansas consumers use tax in the appropriate amount on those purchases.

(5) *Manufacturing exemptions.* Photographers and photofinishers may not claim exemption as manufacturers on automated printing and developing equipment since they are not engaged in what is commonly regarded as an industrial processing operation and they typically operate at retail.

(6) *Place of sale.* For sales delivered in Kansas or shipped to a Kansas address, state and local sales tax is due based on the photographer's or photofinisher's Kansas business location regardless of where the photographs were taken. For sales shipped to an address outside Kansas, Kansas sales tax does not apply if the photographer or photofinisher mails or ships the item being sold by a common carrier such as UPS. Kansas sales tax also does not apply if the photographer or photofinisher delivers items to persons outside Kansas using their own vehicle. However, Kansas photographers who perform services in another state or routinely deliver photographs to customers there may be required to register for and collect that state's sales tax.

While this Q & A answers most of your questions, the sales tax law treats advertisers as consumers. This is because advertising agencies are not required to collect sales tax from their customers for advertising services. This is reflected in K.S.A. 2001 Supp. 79-3606(nn), which exempts: "except as otherwise provided by this act, all sales of services rendered by an advertising agency or licensed broadcast station or any member, agent or employee thereof." For XXXX, this means that it must collect sales tax on all charges billed to an advertising agency. The "except as otherwise provided" exception in (nn) is for sales of multiple units of tangible personal property by advertising agencies to clients, such as 1,000 posters, 500 printed t-shirts, or 5,000 key chains. When an advertising agency fabricates such items for a customer, the agency should charge sales tax on the customer billings.

Your letter contains several Fact Situations in which you describe XXXX's activities and ask how sales and use taxes applies. In Fact Situation 1, XXXX produces a thirty-second television advertisement for a Kansas grocery store. XXXX delivers the master tape to the store in Kansas. XXXX should collect sales tax on the total amount that is charged to the consumer without any deductions. The first paragraph of the Q & A explains why: "Sales tax applies to the total charge for aerial photographs, security photographs, films, and similar items produced under a contractual agreement which includes design time and similar labor charges." XXXX is required to pay sales tax on everything that it buys for the shoot, except the blank tape for the master tape: "In determining the selling price, no deduction may be taken for charges such as sitting fees or for ancillary expenses such as travel time and related expenses, telephone calls, salaries or wages, models, and other similar expenses, whether or not these expenses are separately stated in billings to purchasers."

Fact Situation 2 is the same as Fact Situation 1, except that the video is being prepared for an advertising agency in Kansas who receives a "master tape" from XXXX. As with the Fact Situation 1, XXXX is required to collect tax on the full amount changed to the consumer --- in this case the advertising agency. As in Fact Situation 1. XXXX is required to pay sales tax on everything that it buys and uses for the shoot. As in the first fact situation, XXXX may claim exemption when it purchases the blank tape that becomes the master tape and is physically delivered to the advertising agency.

Fact Situation 3 is the same as Fact Situation 1, except that the master tape is shipped to a store in Missouri via the United States Mail or common carrier, such as UPS or Fed Ex. In this case, the paragraph number (6) of the Q & A applies. It explains that when films or prints are delivered to another state, the transaction is treated as a sale in interstate commerce and no Kansas tax applies. Conceptually, the exemption as a sale in interstate commerce results from treating photographers as fabricators of tangible personal property. Had the department treated photography as a taxable service rather than as the fabrication and sale of tangible personal property, taxation of photographers would have been fundamentally different and very little of the Q & A would apply.

As with Fact Situation 3, Fact Situation 4 involves producing a video tape for a grocery store located outside Kansas. Again, the master tape is delivered to an address outside Kansas. As with Fact Situation 3, no Kansas sales or use tax is due on the transaction since the tape is considered to have been sold in interstate commerce. It makes no difference that XXXX receives payment for the tape from a business in Kansas. Again, as is the case in the other numbered Fact Situations, XXXX is required to pay sales tax on everything it buys except for the blank tape that is used for the master tape and transferred to the consumer.

Your letter cites to Information Guide 19-87-3, for "Advertising Agencies and Related Businesses." This guide on can be found in several tax services, which present it as stating current department policy. However, the department has revoked Information Guide 19-87-3. It should not be relied on or followed.

I hope that I have answered all of your questions. If you need to discuss anything further, please call me at 785-296-3081. 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.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 03/12/2003 Date Modified: 03/12/2003**