**Private Letter Ruling**

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| **Ruling Number:** | **P-2003-040** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Repair of spillway damage due to flood.** |
| **Keywords:** |  |
| **Approval Date:** | **09/17/2003** |

**Body:**

Office of Policy & Research

September 17, 2003

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Dear Mr. TTTTT:

We wish to acknowledge receipt of your letter dated May 23, 2003, regarding the application of Kansas Retailers’ Sales tax.

K.S.A. 79-3603(p) states in part: “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 or repair of a bridge or highway.
For the purposes of this subsection:
"Original construction" shall mean the first or initial construction of a new building or facility. The term "original construction" shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances. . .”

Please be advised that if the spillway would have been a building or facility which was damaged by a flood, then the labor services would have been exempt from Kansas sales tax(es). Therefore, both the labor and materials would be subject to the appropriate Kansas sales tax(es).

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: 10/01/2003 Date Modified: 10/01/2003**