**Private Letter Ruling**

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| **Ruling Number:** | **P-2011-007** |

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| **Tax Type:** | **Transient Guest Tax; Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Temporary housing facilities for Department of Defense military personnel.** |
| **Keywords:** |  |
| **Approval Date:** | **07/29/2011** |

**Body:**

Office of Policy & Research

July 29, 2011

**XXXXXXXXXXXXXXXX**
**XXXXXXXXXXXXXX**
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**XXXXXXXXXXXXXXXXXXX**

Dear XXXXXXXXXXX:

Your letters dated May 2, 2011 & July 18, 2011, have been referred to me for response. Your letters state, in pertinent part, as follows:

XXXXXXXXXXXXXXXXXX (Applicant) is a corporation that owns and operates hotels across the United States. Applicant has entered into a contract with a public /private development group (XXXXXXXXXXXXX.) to operate certain military facilities.

The United States Department of Defense (DOD) has started privatizing the facilities on its bases used to house military personnel who are not permanently assigned to the respective posts. DOD has agreed to lease the temporary housing facilities to XXXXXXXXXXXXXXXXXXXX. has in turn contracted with Applicant to provide certain services. XXXXXXXXX. is obligated under its contract with DOD to maintain the temporary housing facilities and to renovate inadequate temporary housing facilities. When renovations are complete, Applicant will manage the temporary housing facilities.

The temporary housing facilities are for the exclusive use of whom Applicant terms “official travelers.” Official travelers are military personnel either on temporary duty, undergoing a change in station or traveling on official military business. All guests at the temporary housing facilities must have on-post access; no one can walk into the temporary housing facilities without prior DOD approval.

K.S.A. 12-1693(a) imposes a Transient Guest Tax on the gross receipts derived from or paid directly or through an accommodations broker by transient guests for sleeping accommodations in any hotel, motel or tourist court. Therefore, for the Transient Guest Tax to apply, the establishment in question must meet the definition of “hotel, motel, or tourist court.”

K.S.A. 12-1692(b) defines "hotel, motel, or tourist court," for the purpose of applying the Transient Guest Tax, as any structure or building which contains rooms furnished for the purposes of providing lodging … and which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient or permanent guests and having more than two bedrooms furnished for the accommodation of such guests. Therefore, since the lodging is not kept, used, maintained, advertised or held out to the public, there would be no Transient Guest Tax imposed on these transactions.

K.S.A. 79-3603(g) imposes a Retailers’ Sales Tax on the gross receipts from the service of renting of rooms by hotels, as defined by K.S.A. 36-501 and amendments thereto, or by accommodation brokers, as defined by K.S.A. 12-1692, and amendments thereto but such tax shall not be levied and collected upon the gross receipts received from sales of such service to the federal government and any agency, officer or employee thereof in association with the performance of official government duties.

K.S.A. 36-501(a) defines “Hotel,” for the purposes of applying the Kansas Retailers Sales Tax, as every building or other structure which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay primarily to transient guests and in which four or more rooms are used for the accommodation of such guests. Therefore, these transactions would not meet the definition of “hotel” under the Kansas Retailers’ Sales Tax.

K.S.A. 1692(f) defines "Accommodations broker" as any business which maintains an inventory of two or more rooms in one or more locations which are offered for pay to a person or persons for not more than 28 consecutive days. Applicant would meet the definition of an “accommodation broker” under this statute and would be subject to Kansas Retailers’ Sales Tax.

K.S.A. 79-3603(g) exempts from the Kansas Retailers’ Sales Tax: gross receipts from sales of such services to employees of the federal government in association with the performance of official government duties. Based on the fact that only military personnel either on temporary duty, undergoing a change in station or traveling on official military business will be staying in the aforementioned temporary housing units, these transactions would be exempt from Retailers’ Sales Tax in the state of Kansas.

In summary, the transactions described in your inquiry would not be subject to the Transient Guest tax or the Kansas Retailers’ Sales Tax.

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.

Sincerely,

Mark Ciardullo
Office of Policy and Research

**Date Composed: 08/02/2011 Date Modified: 08/02/2011**