**Private Letter Ruling**

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| **Ruling Number:** | **P-2012-005** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Purchase and installation of certain interior lighting and fans at a Kansas manufacturing plant and warehouse.** |
| **Keywords:** |  |
| **Approval Date:** | **08/16/2012** |

**Body:**

Office of Policy and Research

August 16, 2012

XXXXX
XXXXX
XXXXX

RE: Your letter dated August 2, 2012

Dear XXXXX:

Thank you for the letter you recently submitted on behalf of your client, ZZZ. ZZZ operates a manufacturing plant in Kansas that produces skylights and skylight systems. ZZZ warehouses its completed products in a warehouse located at its Kansas manufacturing site before distributing them to wholesalers, retailers, and consumers.

You ask if ZZZ’s purchase and installation of metal halide lights that are used for interior lighting at its Kansas manufacturing plant and warehouse, and its purchase and installation of fans used in the same facilities to exhaust interior air, are subject to Kansas sales and use tax. You also ask if electricity consumed by the lights and fans is subject to Kansas tax. Please be advised the sale and installation of the lights and fans, as well as the electricity used to operate them, are taxable.

That these charges are subject to Kansas sales or use tax is clearly established by a tax appeal pursued by Ward Kraft Forms, Inc. (Ward Kraft) that was finally decided by the Kansas Court of Appeals. The Court issued a per curium decision that upheld a Kansas Board of Tax Appeals’ (BOTA) order which granted the Kansas Department of Revenue’s (KDOR’s) request for a directed verdict. *See In the Matter of the Appeal of Ward Kraft Forms, Inc.,* 176 P.3d 250 (2008); *In the Matter of the Appeal of Ward Kraft Forms, Inc.,* Docket No. 2005-786-DT (Ks. Ct of Tax Appeals, Feb. 3, 2006).

Ward Kraft appealed KDOR’s assessment of unreported sales tax. The tax was not collected or reported because Ward Kraft’s consumed-in-production exemption certificate was honored by its electric utility provider. The certificate claimed an exemption percentage for purchases of taxable and exempt electricity supplied through one meter. Ward Kraft paid less sales tax on its monthly utility bills than was owed by improperly including electricity consumed to heat and air condition one of its buildings in its calculation of the exemption percentage claimed on its exemption certificate. The building in question housed a printing press.

The manufacturer of the printing press specified it should be housed in an area maintained at approximately 71 degrees Fahrenheit, and at 35 percent relative humidity during the heating season and 45 percent relative humidity at other times. Failure to maintain the correct temperature and humidity could cause paper jams, ink coagulation, misapplication of ink to the printed product, and other problems that could render the printing press inoperable or result in finished products that are unmarketable.

In upholding KDOR’s assessment, BOTA observed:

Subsection (5) of K.S.A. 79-3606(kk) is of particular relevance in the instant case. Subsection (5) specifically provides that “[m]achinery and equipment used as an integral or essential part of an integrated production operation” shall *not*include machinery or equipment used for general plant heating or cooling. . . .

Moreover, the Department has promulgated administrative regulations specifically addressing what uses of electricity are – and are not – exempt from retailer’s sales taxation. Under K.A.R. 92-19-53(e), electricity consumed by machinery and equipment actually used to produce tangible personal property *is*exempt as consumed in production, while under K.A.R. 92-19-20(a), exemption for electricity *is not*allowed when the electricity is used for heating, cooling and lighting buildings or business premises. *In the Matter of the Appeal of Ward Kraft Forms, Inc.,* Docket No. 2005-786-DT (Ks. Ct of Tax Appeals, Feb. 3, 2006), *(Underlining provided).*

While not quoted in the BOTA order, K.S.A. 79-3606(kk)(5)(H) specifies the integrated plant exemption does not exempt the sale or installation of: “(H) machinery and equipment used for general plant heating, cooling and lighting. . . .”

*Ward Kraft Forms, Inc.*establishes Kansas manufacturers and warehouses are not entitled to claim the consumed-in-production exemption for electricity consumed by overhead lighting in a manufacturing plant or warehouse or that is consumed by equipment used to control air temperature or air qualify throughout these facilities. *Ward Kraft Forms, Inc.*also establishes the sale and installation of such lights and fans are not exempt under the integrated plant exemption. This exemption does not apply because the lights and fans are not used as an “integral part” of a manufacturer’s “integrated production operation.” *See K.S.A. 79-3606(kk)(2)(A); K.S.A. 79-3606(kk)(5).*

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,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 08/20/2012 Date Modified: 08/20/2012**