**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-139** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Construction project consisting of the construction of a new addition to an existing grocery store.** |
| **Keywords:** |  |
| **Approval Date:** | **06/28/1999** |

**Body:**

Office of Policy and Research

June 28, 1999

XXXXXXXXXX
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Re: Kansas Sales Tax

Dear XXXXX:

Your correspondence of May 15, 1999, has been referred to me for response. Thank you for your inquiry.

Your letter indicates you are a general contractor ready to start a building project for an existing grocery store in Atchison, Kansas. The project consists of constructing a new addition that will be occupied by a new front entry, deli, bakery, and seating area. You note it will be necessary to remove the existing walls to allow for construction of the new addition.

You go on to indicate it is your understanding that all work associated with the addition is designated as original construction including: building foundations, walls, roof system, electrical feed from the existing panel, water and natural gas service from the existing, sewer extension to the existing sewer line, removal of existing walls and finishes to allow for the new construction. You note the sales tax you will need to pay on this area of construction will be for materials and equipment purchased or rented during construction. You also note you do not have to pay sales tax on your labor, owned equipment, overhead or profit.

Your letter also indicates you have a remodeling phase of construction. This work includes the relocation of the existing checkouts, remodeling of the customer service area, and changing the original deli/bakery into an office and retail sales area. You note it is your understanding that you need to pay sales tax on all your material, labor, rented or purchased equipment, owned equipment, overhead and profit.

By your letter you ask that we clarify in writing the application of sales tax to your construction project. You also ask that we clarify the rate of tax as it applies to original and remodeling construction.

The Kansas retailer’s sales tax (at the rate of 4.9%) is imposed by K.S.A. 79-3603. Subsection (p) of the statute provides for the imposition of sales tax on:

(p) 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:
(1) “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;
(2) “building” shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;
(3) “facility” shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or of any municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility; and
(4) “residence” shall mean only those enclosures within which individuals customarily live;

The statute is interpreted, in part, by K.A.R. 92-19-66b. This regulation deals with the topic of labor services. A copy is enclosed for your convenience.

Based on the information provided in your letter, your understanding of the application of Kansas sales tax to the construction project in question is correct. The labor services you provide for the portion of the project which is original construction will not be subject to Kansas sales tax. The labor services you provide for the remodeling portion of the project will be subject to Kansas sales tax at the rate of 4.9%, plus any local sales tax.

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.

I trust this information is of assistance. If I can be of further service, please feel free to contact me.

Sincerely,

Jim Weisgerber
Attorney
Tax Specialist

JW:jw

Enclosure: K.A.R. 92-19-66b

**Date Composed: 07/07/1999 Date Modified: 10/11/2001**