**Private Letter Ruling**

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| **Ruling Number:** | **P-2000-014** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Meals purchased by school districts from a restaurant.** |
| **Keywords:** |  |
| **Approval Date:** | **04/17/2000** |

**Body:**

Office of Policy & Research

April 17, 2000

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Re: Kansas Sales Tax

Dear XXXXX:

Your correspondence of February 8, 2000 has been referred to me for response. Thank you for your inquiry.

By your letter you request a private letter ruling on behalf of your client XX XXXX XXX, XX to clarify some confusion about whether sales tax is due on meals purchased by the XXXXX School District from your clients restaurant.

The Kansas retailers’ sales tax is imposed by K.S.A. 79-3603. Subsection (d) of the statute imposes sales tax on:

(d) the gross receipts from the sale of meals or drinks furnished at any private club, drinking establishment, catered event, restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public;

Exemptions from sales tax are found in K.S.A. 79-3606. Subsection (c) of the statute provides and exemption for:

(c) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by such school or institution for nonsectarian programs and activities provided or sponsored by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes. The exemption herein provided shall not apply to erection, construction, repair, enlargement or equipment of buildings used primarily for human habitation;

The manner in which an entity claiming exemption from sales tax should establish entitlement to the exemption is set forth in K.S.A. 79-3651. The statute provides, in pertinent part, as follows:

(a) For the purpose of the proper administration of the Kansas retailers’ sales tax act and to prevent evasion of the tax imposed thereunder, it shall be presumed that all gross receipts from the sale of tangible personal property or enumerated services are subject to tax until the contrary is established. The burden of proving that a sale is not subject to tax is upon the vendor unless the vendor takes from the purchaser an exemption certificate to the effect that the property or service purchased is not subject to tax.
(b) An exemption certificate shall relieve the vendor from collecting and remitting tax when taken in good faith. A vendor shall be presumed to have accepted an exemption certificate in good faith in the absence of evidence to the contrary. A vendor shall be deemed to have accepted an exemption certificate in good faith if the vendor: (1) Maintains a completed exemption certificate; (2) has ascertained the identity of the person or entity who presented the exemption certificate; and (3) has not been shown by a preponderance of the evidence to have had knowledge that the presentation of the certificate was improper.
(c) The exemption certificate shall be substantially in such form as the director may prescribe. . . . .

As provided by K.S.A. 79-3651, a vendor is relieved from collecting and remitting sales tax when they receive an exemption certificate from the purchaser. The exemption certificate shall be substantially in the form prescribed by the director. The proper use of exemption certificates is explained in the Kansas Department of Revenue publication Kansas Exemption Certificates, a copy of which is enclosed.

Under the facts presented by your letter, the real question from your client’s perspective is not whether the purchase being made by the School District are subject to sales tax, but whether your client can complete the transaction without being responsible for collecting sales tax. The answer to that question is yes, they can complete the transaction without being responsible for collecting sales tax if they obtain an exemption certificate from the School District.

The School District may complete the appropriate exemption certificate form from the Kansas Exemption Certificates booklet and provide it to your client. In this case your client can accept one form as a blanket exemption for future purchases. Any purchases made with a School District credit card can then be considered tax exempt.

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

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Enclosure: Kansas Exemption Certificates

**Date Composed: 04/19/2000 Date Modified: 10/11/2001**