**Private Letter Ruling**

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| **Ruling Number:** | **P-2003-018** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Purchase order or conditional sales contract.** |
| **Keywords:** |  |
| **Approval Date:** | **04/14/2003** |

**Body:**

Office of Policy & Research

April 14, 2003

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RE: Your letter dated March 21, 2003

Dear XXXX:

Thank you for your recent letter. In it, you describe a purchase order or conditional sales contract, and ask what you client's sales tax duties are under it. You identify your client by name and state that it is a finance and leasing company that is registered as a retailer with the State of Kansas.

A conditional sales contract is a sale in which the buyer gains immediate possession but the seller retains title until the buyer performed a condition --- normally payment in full of the purchase price. When there is a condition sale, sales tax must be collected by the seller on the full selling price at the time the property is transferred from the seller. Finance charges, carrying charges, interest, insurance, and other service charges for financing a sale of tangible personal property under a conditional, credit, or installment sales contract are not be considered to be part of the selling price and are not be subject to sales tax if such finance charges are segregated on the invoice, sales slip, or other billing document, or are billed separately to the buyer. If these charges are not separately stated or separately billed, the charges are considered to be part of the selling price and are taxable.

A purchase order is a document that authorized the retailer to deliver the goods with payment to be made later. A purchase order can be characterized as an offer that is accepted when a retailer supplies the quality and quantity ordered to the buyer.

The contract that you describe appears to be a hybrid of these two types of contracts since the financing company does not retain title but agrees to pay the retailer upon delivery. In cases like this, Kansas law treats the transaction as a conditional sale, in which tax accrues, and the sale is accounted for as being made, when the retailer transfers the property sold to the buyer. With these thoughts in mind, I will answer your questions.

1) Whether the Client should pay sales tax to the third party vendors (registered in Kansas as a vendor) on the invoice issued to the Client on behalf of the small business owner/end user?

Answer: Yes. The finance company should pay the sales tax on the full selling price charge by the third-party vendor. The selling price should not include any separately stated finance charges. If the third-party vendor is not registered to collect Kansas retailers' sales tax or compensating tax, the client should accrue Kansas sales or use tax on the selling price since the property will be used in Kansas. The tax accrued by the finance company should be financed to the end user along with the retail selling price for the goods.

2) Whether the creation of the conditional sales contract requires the Client to collect sales tax or whether it will be treated as a mere financial transaction?

Answer. No, the transaction will be treated as a financial transaction. The finance company is not required to collect tax. A finance company that enters into this type of a financing arrangement is not treated as a retailer who buys tangible personal property exempt and then sell it to its customer. The financing company is viewed as financing a sales transaction.
When a finance company engages in such transactions and pays for the property, it can be viewed as the buyer for certain purposes --- especially if it retains title to the property as a security interest. Therefore, it is in the finance company's best interest to make certain that Kansas tax is paid to any registered retailer at the time of sale, and that, if Kansas tax isn't paid at the time of sale, that the finance company either takes the necessary steps to accrue the sales or use tax that is due at the time of the sale, or has in its possession an exemption certificate issued by the end user. If the finance company is audited and it is discovered that tax was not paid to the vendor at the time of sale, the department could --- and probably would --- pursue both the finance company and the end user for the unpaid tax.

3) Where the equipment vendor is not a registered vendor, may the Client accrue the use tax on the vendor's invoice, pay the tax to Kansas, and finance the sales/use tax under the conditional sales contract?

Answer: Yes. A finance company that pays the purchase price of property can be seen as a buyer, especially if the finance company retains title to the property as a security interest. Therefore, it is in the finance company's best interest to make certain that any sales tax that is due is paid to the vendor, and if it wasn't paid to the vendor, to accrue the sales or use tax that is owed and finance the tax under the contract.

4) Assuming that exemptions are capable of being claimed by the end user, what steps if any must the Client take to qualify the receipts under the conditional sales contract as exempt?

Answer: In Kansas , certain end users are exempt from paying sales tax on their purchases. This includes non-profit hospitals, non-profit educational institutions, political subdivisions of the State of Kansas, among others. When a finance company enters into a contract like the ones discussed here, the finance company should require the end user to provide it with a copy of the completed exemption certificate that the end user provided to the vendor. Exemption certificates are available on our web site under "Forms" and may be downloaded and completed by the end user. Our web site address is www.ksrevenue.org and the exemption booklet is Publication KS-1520. This booklet was updated last month. Please note that Kansas law does not require the finance institution to secure and retain a copy of the end user's exemption certificate --- the law places this duty on the retailer who is presented with the end user's exemption claim. However, as a matter of sound business practice, the finance company should require the end user to provide it with a copy of the certificate. If audited, the finance institution will then be in possession of an exemption certificate that shows why the transaction went untaxed. As has been discussed, during an audit, a finance company can be held liable for untaxed purchases as a buyer, especially if the finance company acquires title to the purchases. The finance company's possession of a copy of the exemption certificate should help avoid this kind of assessment.

I hope that I have answered all of your questions. If you have any addition questions, please call me at 785-296-3081 and we can discuss them. This is private letter ruling. It 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 ruling.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 04/16/2003 Date Modified: 04/16/2003**