**Private Letter Ruling**

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| **Ruling Number:** | **P-2005-028** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales of restaurant equipment to American Legion and VFW posts.** |
| **Keywords:** |  |
| **Approval Date:** | **10/31/2005** |

**Body:**

Office of Policy & Research

October 31, 2005

XXXX
XXXX
XXXX

RE: Your fax received October 28, 2005

Dear XXXX:

Thank you for your recent letter. You operate a restaurant supply service. Recently, a number of American Legion and VFW commanders have been insisting that their organizations are exempt from paying sales tax when they buy restaurant equipment from you. You spoke with one of our auditors recently. She informed you that your sales to the American Legion and VFW are taxable. You ask for something in writing to confirm that these sales are taxable. Please be advised that your sales to these organizations are taxable under the Kansas retailers' sales tax act. You must collect sales tax on your sales to them.

The confusion that your experiencing with these two groups apparently stems from the 1998 exemption of membership dues paid to the American Legion and VFW. This exemption exempts members of the American Legion and VFW from paying sales tax on their membership dues. It does not exempt the American Legion or VFW from paying sales tax on their purchases.

Apparently, the post commanders believe that the 1998 exemption of membership dues exempted the American Legion and VFW from *paying* sales tax on their purchases. It does not. The 1998 exemption extends only to membership dues. The Kansas legislature has not exempted the American Legion or VFW from paying sales tax on their purchases since 1970.

Of course, posts that sell food and non-alcoholic drinks and are entitled to claim a resale exemption when they buy the food and drink to resale. Kansas does not tax purchases that are for resale by registered retailers. Posts that sell meals and drinks may not claim exemption on their restaurant supplies, such as pots and pans, knives, appliances, and other kitchen hardware. A post uses this equipment rather than reselling it. Please note that a post must be registered for sales tax purposes and must have secured a retailer's sales tax registration certificate from the department. If a post is not a registered retailer, vendors must charge sales tax to the post on all of their sales, including sales of food or drink.

Notice 98-01 was issued in 1998 to explain how the new exemption for membership dues would apply:

**Membership Dues and Fees.** . . . .Also exempted are the membership dues paid to military veterans organizations, such as the Veterans of Foreign Wars and the American Legion, and their auxiliaries. These dues were previously taxed when payment allowed members to use the organization's facilities for recreation or entertainment. K.S.A. 79-3603(n).

The exemption for dues is also discussed in an administrative regulation:

K.A.R. 92-19-73. **Membership fees and dues.**(a) Each public or private club, organization, or business charging dues to members for the use of the facilities for recreation or entertainment shall collect sales tax on the gross receipts received from the dues, except for the following:
(1) Clubs and organizations that are exempt from property tax pursuant to the ‘‘eighth’’ paragraph of K.S.A. 79-201 and amendments thereto, including the American legion, the veterans of foreign wars, and certain other military veterans’ organizations;
(2) clubs and organizations that are exempt from property
tax pursuant to the ‘‘ninth’’ paragraph of K.S.A. 79-201 and amendments thereto, including the Y.M.C.A., Y.W.C.A., Boy Scouts, Girl Scouts, and certain other humanitarian
community service organizations; and
(3) nonprofit organizations that support nonprofit zoos, if the organization is exempt pursuant to section 501(c)(3) of the federal internal revenue code of 1986 and the dues are used to support the operation of the zoo.
(b)(1) ‘‘Dues’’ means any charge that is a debt owed to the club, organization, or business by an existing member or prospective member in order for the member or prospective member to enjoy the use of the facilities of the club, organization, or business for recreation or entertainment, and, except as provided in subsection (b)(2), shall include periodic or onetime special assessments, initiation
fees, and entry fees.
(2) Dues shall not include a redeemable equity contribution required for membership, if the club or organization is obligated to repay the contribution, and the contribution is reflected as a liability on the club’s or organization’s books and records. Redeemable equity contribution shall include membership stock, certificates of membership, refundable deposits, refundable capital surcharges, and refundable special assessments. (3) If all or part of a redeemable equity contribution paid to acquire or retain membership ceases to be carried as a liability on the books and records of a club that continues operation, or its successor, and the contribution has not been redeemed by a former member or former member’s estate, the amount of the contribution that is no longer carried as a liability shall be subject to sales tax.
(c) ‘‘Recreation or entertainment’’ means any activity that provides a diversion, amusement, sport, or refreshment to the member and includes health, fitness, exercise, and athletic activities. (Authorized by K.S.A. 2000 Supp. 79-3618; implementing K.S.A. 2000 Supp. 79-3603 as
amended by SB 1, Sec. 1 and as further amended by SB 322, Sec. 2; effective May 1, 1988; amended July 27, 2001.)

The Kansas retailers' sales tax act contains nothing that exempts sales to the American Legion or VFW. If a post commander wishes to discuss this issue, the commander can call the Office of Policy and Research at 785-296-3081, and ask to speak with a tax specialist. Please note that the commanders of these posts are required to pay the sales taxes that you and every other business charges to them for taxable sales. If a commander refuses, he or she is subject to fines for each time the tax is struck from your lawful billings. K.S.A. 79-3651(g) provides:

(g) It shall be the duty of every person who purchases tangible personal property or services that are taxable under this act to pay the full amount of tax that is lawfully due to the retailer making the sale. Any person who willfully and intentionally refuses to pay such tax to the retailer shall be guilty of a misdemeanor and upon conviction shall be punished and fined as provided by subsection (g) of K.S.A. 79-3615, and amendments thereto.

I hope that letter helps resolve the tax collection problems that you're experiencing. 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

cc: Judy Laflin, Audit Services Bureau

**Date Composed: 11/02/2005 Date Modified: 11/02/2005**