**Private Letter Ruling**

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| **Ruling Number:** | **P-2006-011** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Contractor purchases of drill bits, saw blades and utility-knife blades.** |
| **Keywords:** |  |
| **Approval Date:** | **06/15/2006** |

**Body:**

Office of Policy & Research

June 15, 2006

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XXXX

RE: Your letter dated June 5, 2006

Dear XXXX:

Thank you for your recent letter. You work for a business that sells construction materials and supplies. You ask if a contractor that hold a project exemption certificate (PEC) is allowed to claim exemption on purchases of drill bits, saw blades, and utility-knife blades. The contractor asserts that his records will establish that the drill bits and blades being purchased under the PEC will be worm out and rendered useless on the PEC construction project. Please be advised that a contractor's purchase of replaceable drill bits, saw blades and other replaceable tool parts are taxable even though the contractor knows that the items will be consumed on a construction project, including a project that qualify for a PEC.

There are several statutory subsections that extend the right to secure a project exemption to certain qualifying entities. These include: K.S.A. 2005 Supp. 79-3606(d), K.S.A. 2005 Supp. 79-3606(e), K.S.A. 2005 Supp. 79-3606(xx), K.S.A. 2005 Supp. 79-3606(aaa), and K.S.A. 2005 Supp. 79-3606(ccc). These subsections contain the nearly identical proviso:

Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for . . . *[any political subdivision of the state] or [any nonprofit zoo] or [any such organization] or [any such clinic or center].* K.S.A. 2005 Supp. 79-3606(d), K.S.A. K.S.A. 2005 Supp. 79-3606(xx), K.S.A. 2005 Supp. 79-3606(aaa) and K.S.A. 2005 Supp. 79-3606(ccc).

The department has consistently construed these provisos as prohibiting a sales tax exemption for purchases of tools and tool parts, including replaceable drill bits, saws, grinding wheels, router bits, and other replacement parts for hand tools and other tools. This proviso has also been construed as prohibiting exemption of small hand tools that contractors expense to a job because they are often lost, discarded, or cannot be reused. Examples of tools that are commonly expensed to a construction project include screwdrivers, putty knives, utility knives, hammers, brooms used to apply tar, certain application brushes, and so forth.

The controlling regulation reaffirms that a contractor's purchases of tools are not exempt when purchased under a PEC. K.A.R. 92-19-66c provides:

**Purchase and lease of tools and equipment.** (a) Each contractor, subcontractor and repairman shall be considered the final user or consumer of all tools, equipment and machinery purchased to perform construction services. Sales of tools, equipment and machinery to contractors, subcontractors and repairmen to perform construction services shall be subject to sales tax. With the exception of leases of equipment and machinery by a contractor under a project exemption certificate, leases of tools, machinery and equipment by a contractor to perform construction services shall be subject to sales tax.
(b) Leases of tools, equipment and machinery by a contractor are not exempt from sales tax as an ingredient or component part of the services performed by the contractor, whether the services are taxable or exempt from the sales tax.
(c) Leases of tools, equipment and machinery by a contractor are not exempt from sales tax as consumed in the production of the service performed by the contractor, whether the services are taxable or exempt from the sales tax. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988.)

The assertion that drill bits, saw blades, and utility-knife blades should not be considered to be "tools" was rejected by the Board of Tax Appeals (BOTA) when it ruled on what qualify as “hand tools” for purpose of K.S.A. 79-201o and K.S.A. 79-219. The BOTA found that saw blades, bits, and routers are hand tools for purposes of those property tax statutes. *See In the Matter of the Application of Stude, Tim A*. (Docket No. 1998-2334-TX); *In the Matter of the Application of King, Doug* (Docket No. 1998-1509-TX); *In the Matter of the Application of B & B Radiator & Auto Air* (Docket No. 1998-1461-TX); *In the Matter of the Application of Krouse Custom Built* (Docket No. 1998-1129-TX). This treatment of tools is consistent with the sales tax act's treatment of contractors as being the final user or consumer of the materials and supplies they buy. Contractors transform construction materials into buildings and other real property structures. Therefore, contractors cannot claim a resale exemption on the basis that they are going to resell the materials as tangible personal property.

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: 06/19/2006 Date Modified: 06/19/2006**