**Opinion Letter**

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| **Letter Number:** | **O-2000-043** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Distribution of skin care products through multi-level distribution agents who sell at wholesale to cosmetic surgeons and dermatologists.** |
| **Keywords:** |  |
| **Approval Date:** | **12/14/2000** |

**Body:**

Office of Policy & Research

December 14, 2000

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RE: Your faxed memorandum dated November 15, 2000

Dear XXXX:

Thank you for your inquiry that we received by fax last month. You represent a distributor of skin care products that markets the products in Kansas through dependent agents who sell at wholesale to cosmetic surgeons and dermatologists. The term “dependent agent” often refers to a home-based agent who works for a multi-level distribution company.

The company is considering changing how it markets products and may begin selling products at retail over the internet. The dependent sales agents who now operate in Kansas will continue to operate here. However, you do not know the relationship that will evolve between the agents and the retail internet sales. You state that the agents may “service” the internet customers but do not explain what this is.

You ask how Kansas sales and use tax applies to sales made over the internet. The web server and web site are located in Colorado. I will assume that the products that are sold over the internet are warehoused there or in another state other than Kansas.

Because the company that you describe has agents who operate in Kansas, it has nexus with Kansas for sales and use tax purposes. This is shown by K.S.A. 79-3702(h)(1), which defines a “retailer doing business in this state” as:

Having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within the state;

Under this provision, retailers are considered to be doing business here if they have representatives of any kind who operates in Kansas. This includes both sales representatives and representatives who are not be involved in sales. Because the company has nexus with Kansas, it is required to collect retailers’ compensating tax on sales to final consumers that are arranged and consummated though interstate commerce. This means that if an order is taken over the internet by the company in Colorado and the goods are delivered to a Kansas consumer though interstate commerce, such as by mail or UPS, Kansas compensating tax should be collected by the company. The statewide compensating (use) tax rate is now 4.9%. Currently, there are no local use taxes in Kansas other than for motor vehicles and boats.

Because of these requirements, the company should register to collect and remit retailers’ compensating tax as well as retailers’ sales tax. Under both sales and use tax, the tax is due based on the sum of the selling price and the shipping charges. See K.S.A. 79-3602(g); K.S.A. 79-3702(a). Since the company would charge and collect use tax directly from the customer on the internet sales with interstate shipments, there are no multilevel concerns and the use tax would simply be charged to the final consumer and remitted to the state.

This approach is straightforward. However, another taxing scenario would arise if orders were placed over the internet, forwarded to a Kansas dependent agent, filled by the agent, and then shipped or delivered by the agent to the consumer in Kansas. These would be Kansas sales that would be subject to state and local sales tax. Because of the multi-level nature of the company, the sales would involve withholding by the company.

Since you do not set forth the different ways in which agents may “service” the retail customer, I will not speculate on how tax should be collected on such sales. Once the company has determined how the Kansas agents will service the internet customers, you should advise me in writing and I will explain which taxes apply and how they should be collected. As noted, if orders are filled by the Kansas agents rather than being shipped directly to the consumer, the sales would be subject to both state and local sales tax. These types of sales would also raise multi-level concerns which would not be present if delivery were made to the in-state customer by the post office or common carrier.

Kansas recently issued Notice 00-06, which explains the sales tax treatment that is accorded to multi-level marketers. I have enclosed a copy for your review. It includes discussions that your client may wish to take advantage of and that affect how it may choose to approach its internet sales.

I hope that this letter adequately explains all of your questions. As indicated, once you determine how the agents will service the Kansas retail customers, I will be happy to discuss the tax consequences.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

Enclosure

**Date Composed: 12/15/2000 Date Modified: 10/10/2001**