**Opinion Letter**

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| **Letter Number:** | **O-2008-001** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales of fiberglass-reinforced plastic (FRP) panels.** |
| **Keywords:** |  |
| **Approval Date:** | **01/16/2008** |

**Body:**

Office of Policy & Research

January 16, 2008

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RE: Your e-mail received on January 9, 2008

Dear XXXX:

Thank you for your recent e-mail. Your company sells fiberglass-reinforced plastic (FRP) panels. FRP panels are composite wall boards that can be easily cleaned. They are commonly used in fast-food restaurants and other businesses that need to clean their walls periodically. Currently, you are selling FRP panels to a Kansas manufacturer for installation in their cookie manufacturing plant. Your contact believes that the panels qualify as manufacturing equipment and can be purchased tax exempt. His exemption claim is based on his belief that the company could not pass health inspection without the installation of FRP panels in the production area. You disagree and contend that the panels are not manufacturing equipment and are not exempt. You are correct. Your sales of the FRP wall panels to this manufacturer are taxable.

K.S.A. 79-3606(kk) exempts sales of manufacturing machinery and equipment to Kansas manufacturers. The scope of the exemption shows why sales of the panels are not exempt:

*The following shall be exempt from the tax imposed by the act: . . . (1) (A) all sales of machinery and equipment which are used in this* *state as an integral or essential part of an integrated production operation* *by a manufacturing or processing plant or facility;*

*(A) "Integrated production operation" means an integrated series of* *operations engaged in at a manufacturing or processing plant or facility* *to process, transform or convert tangible personal property by physical,* *chemical or other means into a different form, composition or character* *from that in which it originally existed. Integrated production operations* *shall include: (i) Production line operations, including packaging operations; (ii) preproduction operations to handle, store and treat raw materials; (iii) post production handling, storage, warehousing and distribution operations; and (iv) waste, pollution and environmental control* *operations, if any; (B) "production line" means the assemblage of machinery and equipment at a manufacturing or processing plant or facility where the actual* *transformation or processing of tangible personal property occurs;*

The sales of the FRP panels are not exempt for a number of reasons. First, wall panels are not equipment. They are construction materials. Second, they do not "operate" and do not act on raw material to convert the material into a different form, composition, or character. While FRP-paneled walls may be necessary to meet health standards, the panels become walls which are real property rather than equipment. Therefore, the panels do not meet the most basic requirements of the integrated plant exemption that must be satisfied for exemption, which is that the item in question is either machinery, equipment, or something listed in the statute as being exempt.

K.S.A. 79-3606(kk) provides that buildings that house a manufacturing operation, along with the building equipment that is used for plant heating, cooling and lighting, are not exempt "manufacturing machinery and equipment." K.S.A. 79-3606(kk)(5)(G) and (H), provide:

*(5) "Machinery and equipment used as an integral or essential part* *of an integrated production operation" shall not include: . .*
*(G) building fixtures that are not integral to the manufacturing operation, such as utility systems for heating, ventilation, air conditioning,* *communications, plumbing or electrical;*
*(H) machinery and equipment used for general plant heating, cooling* *and lighting;*

Construction materials that make up the walls, ceilings, and floors of a building are not part of an integrated production operation. K.S.A. 79-3606(kk)(4)(D) does exempt materials used to construct industrial fixtures, devices, support facilities and special foundations that are necessary for manufacturing operations. The exemption for industrial fixtures is intended to exempt materials used to build catwalks, related ladders and stairs, support legs and towers, crossovers, and so forth. Materials used to build walls are not exempt under (4)(D) because walls are not industrial fixtures and are not exempted anywhere in the statute.

Your contact theorizes that the walls should be exempt because, without them, the plant could not meet various "health and safety" standards. This is a common misperception of how this exemption applies. K.S.A. 79-3606(kk) contains nothing that suggests a test for exemption under it is whether a purchase is needed to comply with standards fixed by OSCA, the FDA, the USDA, or a Kansas regulatory authority. Similarly, nothing in the statute suggests that the test for exemption is whether manufacturing operations could not continue if the purchase wasn't made.

That the test for exemption is not whether something is needed to satisfy administrative requirements be seen by reviewing K.S.A. 79-3606(kk)(5)(A). It provides:

*(5) "Machinery and equipment used as an integral or essential part* *of an integrated production operation" shall not include:*
*(A) Machinery and equipment used for nonproduction purposes, including, but not limited to, machinery and equipment used for plant security, fire prevention, first aid, accounting, administration, record keeping, advertising, marketing, sales or other related activities, plant* *cleaning, plant communications, and employee work scheduling;*

I am certain there are a number of Federal and state statutes or administrative rules that require a manufacturing plant to purchase and maintain fire prevention equipment and first aid equipment. While an agency might order a plant to shut down if the plant is not equipped with the proper fire and first aid equipment, these things are not production equipment that are not exempt under K.S.A. 79-3606(kk). Similarly, cleaning equipment needed to meet health standards is not production equipment that is exempt under K.S.A. 79-3606(kk). Cleaning equipment, while essential to meeting health standards, is not used "to process, transform or convert tangible personal property by physical, chemical or other means into a different form, composition or character." It is typically used to clean up after production operations have ceased. The language of K.S.A 79-3606(kk)(5)(A) makes it clear the test for exemption is not whether a plant could comply with statutory or administrative laws if the if the item in question were not purchased.

Under (kk), machinery and equipment is exempt only if it satisfies the requirements set forth in it. Tax exemption statutes should not be construed so as to exempt things that are not clearly exempted by the language of the statute. Your sales of FRP panels to the Kansas cookie manufacturer are taxable.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 01/16/2008 Date Modified: 01/16/2008**