**Opinion Letter**

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| **Letter Number:** | **O-2010-003** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Internet website operation.** |
| **Keywords:** |  |
| **Approval Date:** | **04/29/2010** |

**Body:**

Office of Policy & Research

April 29, 2010

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RE: Your letter dated April 21, 2010

Dear XXXX:

Thank you for your recent letter. A Kansas corporation plans to establish an internet website that can be accessed by site members. Writers will post article on the site for sale to buyers at a specified price. The buyer obtains the right republish the article in their newspapers and other media. Payment for the articles will be made to the website owner.

The site owner will compile sales information each month, retain a percentage of the receipts as a royalty, and pay over the balance to writers based on receipts from the articles sold. The site owner may charge a membership fee to access to the website.

You ask if any of the charges or receipts are subject to Kansas retailers' sales tax. The answer is no.

Kansas sales tax does not apply to sales of digitized products transferred electronically, except for sales of canned software. Since the articles are being delivered in digitized form via the Internet, the sales are not subject to sales tax. In addition, even if the articles were transferred as paper copies or on CD's, the real object of the buyer is to acquired the right to republish the article, rather than to obtain the article in a tangible form. This is an intangible right and sales of such rights are not subject to Kansas sales tax. Paying for the intangible right to republish a writer's work product is fundamentally different than buying the writer's work product in the form of a book or pamphlet.

This sales tax treatment is the same one that is accorded to lawyers who draft legal instruments, and accountants who complete tax returns and provide tax planning for clients. In these cases, the true object of the transaction is the professional service even though the work product may be delivered to the client on paper or on a CD.

If the website begins charging membership fees to access the website, the fees will not be subject to Kansas sales tax. Kansas currently does not tax access to information service sites such as CCH and Westlaw. This may change in the future. If it does, you will be required to resubmit your request so that the department can determine whether or not the new law applies to the service you describe. An statutory definition of "electronic information service" or something similar may not be broad enough to include a business like the website you describe. While the 2010 legislature is reviewing new revenue sources, I don't believe the legislature has asked Legislative Research for statutory language that would broaden the sales tax base by taxing electronic information services.

Because the services in question are not subject to sales tax, the website owner is required to pay sales tax when it buys goods and taxable services. Taxable purchases include purchases of computers, servers, peripheral equipment such as printers, canned software , paper and other office supplies, office equipment, electricity, gas, and any other purchases that are taxed when made by an average consumer. Please call me at 785-296-3081 if you have any additional questions.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 04/29/2010 Date Modified: 04/29/2010**