**Private Letter Ruling**

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| **Ruling Number:** | **P-1998-75** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Pools and spas installed in residences.** |
| **Keywords:** |  |
| **Approval Date:** | **08/19/1998** |

**Body:**

Office of Policy & Research

August 19, 1998

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Dear Mr. TTTTTTT:

We wish to acknowledge receipt of your letter dated August 10, 1998, regarding the application of Kansas Retailers’ Sales tax.

1998 Senate Bill No. 493 exempts certain construction services that were formerly subject to Kansas sales tax. Effective July 1, 1998, services performed to install or apply tangible personal property are exempt from sales tax when the services involve the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence.

The department has determined that it will construe and administer K.S.A. 79-3603(p)(4) as exempting the land improvements that immediately surround a residence. This means the exemption for residential repair and remodeling services generally will be coextensive with the exemption for the original construction of the residence.

The test for whether something is a “land improvement” shall be whether tangible personal property has been erected upon or affixed to the land. To qualify as residential, the land improvement must be immediately near and must principally serve the residence. This means that repairs to a yard fence are exempt but that repairs to a fence designed to corral pleasure horses are not. Barns and machine sheds for farm equipment shall not be considered to be land improvement that principally serve the residence.

Land improvements shall include, but not be limited to, sidewalks, driveways, patios, fences, sodding, tree planting, utility pipes and wires, septic tanks, swimming pools, and tool sheds. Repair services to structures such as steps, stairs, access ramps, porches, and decks shall be exempt whether they are considered to be part of the residence because they are attached to it, or a land improvement because they are immediately nearby.

In closing, the service of installing or repairing a hot tub or spa, which is about to be or has become a permanent fixture to real property, at a residence would be exempt from sales tax in the state of Kansas. However, the charges for the materials would continue to be taxable, even though a hot tub or spa may have been prescribed in writing by a person licensed to practice the healing arts, since, the hot tub or spa, when installed becomes a fixture to real property.

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 affects this private letter ruling. If I may be of further assistance, please contact me at your earliest convenience at (785) 296-7776.

For your convenience, I have enclosed Revenue Notice 98-02, which is entitled, “Exemption of Residential Repair and Remodel Work”.

Sincerely yours,

Thomas P. Browne, Jr.
Tax Specialist

TPB

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**Date Composed: 09/14/1998 Date Modified: 10/10/2001**