**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-216** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Installation of a complete central heating and air conditioning system at the time of construction of a commercial building.** |
| **Keywords:** |  |
| **Approval Date:** | **09/24/1999** |

**Body:**

Office of Policy & Research

September 24, 1999

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Dear Mr. TTTTTTTT:

We wish to acknowledge receipt of your letter dated September 22, 1999, regarding the application of Kansas Retailers’ Sales tax.

This matter involves the interpretation and application of K.S.A. 79-3603(p) and K.A.R. 92-19-66b(e) and (f).

K.S.A. 79-3603(p) states in part: ". . . no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building or facility. . ."

Original construction is defined in K.S.A. 79-3603(p)(1) as: "the first or initial construction of a new building or facility. The term 'original construction' shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances."

K.S.A. 79-3603(p)(2) defines a building as follows: "'building' shall mean only those enclosures within which individuals customarily live or are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such buildings."

K.A.R. 92-19-66(b) states in part:

"(e) The service of installing or applying tangible personal property for the addition of an entire room or floor to the exterior of an existing building or facility shall not be subject to sales tax. . .

(f). . . Services performed to install or apply tangible personal property for the completion of an unfinished portion of an existing building or facility shall not be taxable when:

(1) The service being rendered was called for in the original blue print, building plan or building specification at the time original construction of the building or facility was started, including any change orders issued during the original construction of the building or facility;

(2) the completion of the unfinished portion of the building or facility is within a time reasonably requisite to the original construction of the building or facility;

(3) the service rendered would have been performed at the time of the original construction of the building of facility, except for circumstances beyond the owner's control. Those circumstances shall not include instances in which the project is essentially completed and usable for the purposes intended, but the owner merely fell short of funds, or when the owner, after taking possession or occupancy of the building or facility, contracts for additional services; and

(4) the owner or occupant is the first or initial owner or occupant of the building or facility."

It is clear from the language of the statute that the services to install a complete central heating and air conditioning system at the same time a commercial building is constructed would qualify for the exemption in K.S.A. 79-3603(p), as said services are in connection with the original construction of a building or facility. However, labor services to install a complete central heating and air conditioning system in any other manner at said commercial building would be subject to the appropriate Kansas sales tax(es). Contractors and sub-contractors would be responsible for paying the appropriate Kansas sales/use tax(es) on the materials purchased for the project.

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 effects this private letter ruling.

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

Sincerely yours,

Thomas P. Browne, Jr.
Tax Specialist

TPB

**Date Composed: 10/11/1999 Date Modified: 10/11/2001**