**Private Letter Ruling**

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| **Ruling Number:** | **P-2001-080** |

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| **Tax Type:** | **Kansas Compensating Tax; Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Gross receipts for the sale of memberships and club kits delivered to members in Kansas.** |
| **Keywords:** |  |
| **Approval Date:** | **07/27/2001** |

**Body:**

Office of Policy & Research

July 27, 2001

XXXXXXXXXXXX
XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXX:

The purpose of this letter is to respond to your letter dated July 17, 2001. In it, you ask if your client is required to collect and remit Kansas retailers’ sale or compensating taxes on the gross receipts for the sale memberships and club kits delivered to members in Kansas.

In your letter you stated:

XXXXXXXX, Inc. ("XXXXXXXXX"). XXXXXXX, located in XXXXXXXXXXX, XXXXXX, is engaged in the wholesale sale of collectibles and giftware, and sells memberships in three collectors' clubsXXXXXXXXXXXXXXXXXX. At issue is how XXXXX's sales of club memberships, and the incidental property transferred therewith, is taxable in your state.

Background

XXXXXXXX most prominent product line is its XXXXXXXXXX, which are sold largely to collectors. XXXXX also sells several other lines of figurine collectibles. Most of the figurines are sold at retail shops such as XXXXXXXX and other gift stores. Due to the popularity of the figurines and the propensity of its end customers to collect the figurines, XXXXXXX (initially through an affiliate that no longer exists) formed collectors' clubs for three of its product lines.

A prospective club member generally picks up a membership application (sample copies attached) at a local retail shop and mails it, with his or her remittance, to XXXXXXXXX

The company also mails applications to potential club members from lists that are either
developed internally or purchased. The individual may purchase a one or two year membership, payable in advance.

Membership confers a number of benefits. Club members become eligible to purchase exclusive members-only figurines. They receive a quarterly newsletter, and they are invited to

attend special shows, to attend members only events at collectors' conventions, and to go on collectors' cruises. The conventions feature seminars on crafts, interactive games, cross- stitching sessions, a paint your own collectible session, a seminar on new products, dinners and a dance. The offerings at particular conventions vary from time to time.

When an individual purchases a membership, he or she receives a "Club Kit." If a two-year membership is purchased, a second Club Kit is sent on the first day of the following club year. The Club Kit generally includes a "symbol of membership" figurine (which is smaller and considerably less expensive to produce than the figurines sold in retail stores), decorative packaging and other ancillary items. The figurines and kits are manufactured and assembled in the Far East.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

At the same time, the surveys make clear that obtaining the club kits, including the free membership piece, are not a primary motivator of the collectors. With the ability to identify multiple reasons for joining a club, only about half of the members indicated that a motivating factor was to obtain the free membership piece.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

RULINGS REQUESTED

I. The "true object" of XXXXXXXX sale of Club memberships is the sale of an intangible and/or a service rather than the sale of tangible personal property; therefore, XXXXXXXX membership fee is not subject to sales or use tax, andXXXXXXXXXis deemed to be the consumer of the Club Kits.

II. XXXXXX is not subject to use tax on its cost of Club Kits shipped to Kansas Club members by common carrier from outside Kansas.

III. If XXXXXXXX is subject to use tax on its cost of Club Kits shipped to Kansas Club members by common carrier from outside Kansas, then XXXXX is entitled to a credit for tax properly paid to the state in which the Club Kits were manufactured, purchased or shipped.

ANALYSIS

I. The "True Object" of the Transaction is the Provision of a Nontaxable Membership

At issue is the proper taxation of XXXXX collector clubs. The sale of a membership is generally considered to be the sale of an intangible and/or a service and is therefore exempt from sales and use tax (unless your state specifically taxes the sale of memberships). XXXXXXXdoes, however, transfer tangible personal property-i.e., the membership kits-to each new or renewing member as an incidental benefit of membership. In those instances in which the service provider or seller of an intangible also transfers tangible personal property to the customer, the taxability of the transaction is generally determined under the "true object" or "essence of the sale" test. See, e.g., Bullock v. Statistical Tabulating Corp., 549 S.W.2d 166 (Tex. 1977) (transactions in which taxpayer encoded raw data on punch cards and gave the cards to its customers was not a sale of tangible personal property because the "true object" of the transaction was not the card but the purchase of coded data). See also MCI Airsignal, Inc. v. State Board of equalization, I CA4th 1527, 2 Cal. Rptr. 2d 476 (Cal. App. 1991) (taxpayer in business of providing telephone paging services did not owe sales or use tax on transfers of paging devices to its customers because the true object of the contracts was the provision of paging services).

In the present case, the "true object" of the membership is the desire to join an "exclusive" club and to obtain the right to purchase exclusive members' only pieces, whether or not such pieces are actually purchased. Surveys indicate that the primary motive of new members is not to obtain the Club Kits and the free membership piece. Indeed, each of the items in the kit is of relatively little value, including the free membership piece, which generally costs less than $2.00 to produce and is smaller and less desirable than purchased figurines. As such, XXXXXXX provision of the club kits is not a retail sale of tangible personal property but is merely the transfer of such property as an incident to the sale of the nontaxable membership.

II. XXXXXXXXX Is Not Subject to Use Tax on Club Kits Shipped to Kansas Members by Common Carrier from outside Kansas

The Club Kits shipped to Kansas members by common carrier from outside Kansas are not subject to use tax in Kansas. The kits are purchased by XXXXXXXXoutside the state. XXXXXXXX does not own them after they are delivered to members in Kansas, nor does XXXXXX exercise any right or power over kits in Kansas. Because XXXXXX neither uses nor owns kits after they are shipped to members, XXXXX is not subject to use tax on the kits.

III. If XXXXX Is Subject to Use Tax on Club Kits Shipped to
Kansas Members by Common Carriers from outside Kansas, XXXXX Is Entitled to a Credit for Tax Properly Paid to the State in which the Kits Were Manufactured, Purchased or Shipped

If the Department of Revenue determines that XXXXXXC is subject to use tax on it's the club kits, then the tax should be imposed on XXXXX cost of the kits, and XXX should be entitled to a credit for any sales or use tax it properly pays to any state in which the test kits or their components were manufactured, purchased or shipped. Based on current practices, it is expected that any such tax would be minimal. However, a credit must be provided for any such tax in order for the use tax to satisfy constitutional requirements. See, e.g., Goldberg v. Sweet, 488 U.S. 252, 261-262, 109 S. Ct. 582 (1989).

Kansas Department of Revenue Response

Is the sale of the memberships as described in this letter subject to Kansas retailers’ sales tax. No, the Kansas sales tax act imposes tax on the sales of tangible personal property and enumerated services. Although the law imposes a tax on memberships, the imposition is on memberships for which the purchaser gains access to a facility for the purpose of recreation.

XXXXXXXXX is subject to use tax on its cost of Club Kits shipped to Kansas Club members by common carrier from outside Kansas. Kansas imposes a compensating tax on all items of tangible personal property shipped or delivered into the state for use or consumption. The law also allows for a credit for sales or compensating taxes paid to another state. ThereforeXXXXXX is required to remit to Kansas, compensating taxes on their cost of the items delivered into Kansas and may reduce this tax by the amount of any other state’s sales or compensating tax already paid on these items

This private letter ruling is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to make an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this private letter ruling.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 08/01/2001 Date Modified: 10/10/2001**