**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-2002-010** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Monthly meter fee charged by a rural water district.** |
| **Keywords:** |  |
| **Approval Date:** | **01/28/2002** |

**Body:**

Office of Policy & Research

January 28, 2002

XXXX
XXXX
XXXX

RE: Your letter of January 24, 2002

Dear XXXX:

Thank you for your recent letter. You ask if a monthly meter fee charged by the rural water district that employs you is subject to sales tax. To answer your question, I will review the legislative history of how Kansas has taxed customer purchases of water utility services.

From 1937 to 2001, Kansas taxed:

the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation under the provisions of this act, and whether furnished by municipally or privately owned utilities. . . *K.S.A.2000 Supp. 79-3603(c); 1937 Kan. Sess. Laws Chap 374, Sec.3.*

This levy taxed all charges from a utility to the customer for the furnishing of gas, water, electricity and heat. This included hook-up charges, disconnection fees, franchise fees, debt reduction charges, late fees, and other charges. *See Water Protection Fee Notice of SB 2765, published 2751.* This established the simple rule that water utilities were required to charge sales tax on each charge billed to their customers. This left water utilities with the task of determining whether the customer was a residential customer or a commercial customer. As you know, most utility customer are homeowners who pay only local sales tax on their services. *See K.S.A. 79-3606(w).*

The 2001 Kansas legislature amended K.S.A. 79-3603(c) to benefit certain water consumers. Senate Bill 332 added three exceptions and changed the sixty-four year old law which required utilities to collect tax on the entire amount billed to customers. Since July, 2001, Kansas has taxed:

the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation under the provisions of this act, and whether furnished by municipally or privately owned utilities *but such tax shall not be levied and collected upon the gross receipts from: (1) The sale of a rural water district benefit unit; (2) a water system impact fee, system enhancement fee or similar fee collected by a water supplier as a condition for establishing service; or (3) connection or reconnection fees collected by a water supplier.* 2001 Senate Bill 332.

The three numbered exceptions mean that rural water districts must now determine whether the individual service charges fall within the meaning of the exceptions now contained in K.S.A. 79-3603(c). To answer your question, I will review the service that you ask about and comparing it with the three exception in subsection (c).

You describe the fee in question in your letter: "This [$9.50 meter] fee doesn't include the purchase of any water. When a user temporarily discontinues use of the water the meter fee is still charged. This gives the user the privilege of resuming water service at a later time." The question is whether this fee is subject to Kansas s sales tax, be it state and local or only local.

The fee your describe is a monthly fee that is charged to all customers. It is billed to them whether or not they buy water. This fee does not qualify under K.S.A. 79-3603(c)(1) as a charge for a rural water district benefit unit. Second, it does not qualify under K.S.A. 79-3603(c)(2) as a fee charged by a water system as a condition for establishing service. This is because the fee is billed to all customers on an ongoing basis. It is not charged "as a condition for establishing service." Third, the fee does not qualify under K.S.A. 79-3603(c)(3) as a "connection or reconnection" fee. As noted, the fee is billed to all customer on an ongoing basis, and not just for connecting or reconnecting their home or business to the service. Accordingly, the fee described in your letter is subject to tax at the appropriate tax rate according to whether there is commercial or residential use.

I hope that my letter adequately answers your questions. If you have more, please call me at 785-296-3081 and we can discuss them. 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,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 02/12/2002 Date Modified: 02/12/2002**