**Private Letter Ruling**

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| **Ruling Number:** | **P-2002-063** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Cigarette tax to be included in base for the calculation of sales tax.** |
| **Keywords:** |  |
| **Approval Date:** | **07/23/2002** |

**Body:**

Office of Policy & Research  
  
  
July 23, 2002

XXXXXXXXXXXX  
XXXXXXXXXXXXX  
XXXXXXXXXXXXXXXX  
  
Dear XXXXXXXXXXX:  
  
The purpose of this letter is to respond to your letter dated July 10, 2002. The contents of you letter are duly noted.  
  
Your question is, “Should the cigarette tax be included in base for the calculation of retailers’ sale tax?”  
  
Since the legal incidence of the cigarette tax is not on the final user (purchaser), it is appropriate for the cigarette tax to be included in the taxable base for the calculation of sales tax. The basic test was established by United States Supreme Court decisions. These decisions point out that the location of the economic impact of a tax does not fix the legal incidence of a tax. It is only if the state law imposes a legal obligation on the purchaser either to pay the tax, or to reimburse the vendor for the tax payment, that the legal incidence of the tax falls on the purchaser. In Gurley v. Rhoden, 421 US 200, 204-5 (1975).  
  
Also, Kansas law, *See K.S.A. 79-3603(a),* specifically addresses the sale of cigarettes*.* This statute requires that the sales of cigarettes be subject to Kansas retailers’ sales tax. The selling price is the amount that the sales tax is based.  
  
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 by operation of law without further department action if there is a change in the controlling statutes, administrative regulations, revenue rulings or case law that materially effects this determination.  
  
  
Sincerely,  
  
  
  
Mark D. Ciardullo  
Tax Specialist  
  
  
MDC  
  
  
**Date Composed: 07/18/2002 Date Modified: 07/19/2002**