**Private Letter Ruling**

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| **Ruling Number:** | **P-2004-003** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Collection of sales tax on membership wellness fees.** |
| **Keywords:** |  |
| **Approval Date:** | **03/24/2004** |

**Body:**

Office of Policy & Research

March 24, 2004

XXXX
XXXX
XXXX

RE: Your letter dated December 29, 2004

Dear XXXX

I have been asked to answer to your recent letter. In it, you ask if the not-for-profit entity that you represent is required to collect sales tax on its membership wellness fees. Attached to your letter is an order issued by the Kansas Board of Tax Appeals. The Board's order concludes that part of XXXX's facility qualifies for ad valorem exemption under K.S.A.79-201a Second (a), and amendments thereto. *See paragraph 10.* Paragraphs 7 and 8 of the order states:

7. The applicant XXXX uses the subject property as a health and recreation facility. The applicant provides health seminars, CPR classes, swimming, yoga, aerobics, and other fitness activities. The applicant charges fees for membership, but provides discounted memberships to several groups of people and reduced fees based on income levels. XXXX'sesidents' fees are included in their residency fees. The applicant first used the property for this purpose March 1, 2000. Construction commenced in September of 1998.

8. The Board finds that the applicant provides a humanitarian service to the community. The services could be best classified as improving the physical, mental and social welfare of others. The Board further finds the applicant uses the subject property for the predominant purpose of providing a humanitarian services to the community. The Board finds the use of part of the property for the XXXX dining facitlity it currently operates is minimal in scope, insubstantial in nature and incidental to the exempt use of the property.

Certain membership dues are taxed at K.S.A. 2003 Supp. 79-3603(n). This section also contains two exceptions from sales tax. Taxed are:

(n) the gross receipts received from dues charged by public and private clubs, drinking establishments, organizations and businesses, payment of which entitles a member to the use of facilities for recreation or entertainment, but such tax shall not be levied and collected upon the gross receipts received from: (1) Dues charged by any organization exempt from property taxation pursuant to paragraphs Eighth and Ninth of K.S.A. 79-201, and amendments thereto; and (2) sales of memberships in a nonprofit organization which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, and whose purpose is to support the operation of a nonprofit zoo;

The exceptions in K.S.A. 2003 Supp. 3603(n) do extend to XXXX. While entities that are exempt from property tax pursuant to Eighth and Ninth of K.S.A. 79-201 are also exempt from sales tax, the Board of Tax Appeals determined that XXXX is exempt from ad valorem taxes pursuant to K.S.A. 79-201a. This is a different statute. This property tax exemption applies because XXXX does not own the property in question. As Paragraph 9 explains:

However, the Board finds that the applicant XXXX does not own the subject property. K.S.A. 79-201 Ninth, and amendment thereto, requires that the subject property be owned and operated by a not for profit corporation. The subject property is owned by the City of Bison pursuant to a deed dated November 6, 1998 and is leased to XXXX pursuant to a lease Agreement dated October 15, 1998.

K.S.A. 79-201 and K.S.A. 79-201a are different exemption provisions. Since XXXX does not qualify for exemption from property tax "under paragraphs Eighth and Ninth of K.S.A. 79-201, and amendments thereto," as required for sales tax exemption by K.S.A. 2003 Supp. 79-3603(n), it must continue to collect tax on the membership dues that it charges. Please note too, that XXXX should be paying sales tax on its purchases of gas, electricity, and water. It does not qualify for exemption under K.S.A. 2003 Supp. 79-3606(w) even though it has an order from BOTA that that exempts it under K.S.A. 79-201.

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.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 03/26/2004 Date Modified: 03/26/2004**