**Private Letter Ruling**

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| **Ruling Number:** | **P-2006-014** |

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| **Tax Type:** | **Kansas Compensating Tax; Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales and service related to electric sign fabrication.** |
| **Keywords:** |  |
| **Approval Date:** | **11/13/2006** |

**Body:**

Office of Policy & Research

November 13, 2006

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RE: Your letter dated October 16, 2006

Dear XXXX:

Thank for your recent letter. You are the controller of an out-of-state company that fabricates electric signs. The company recently volunteered to participate in the Streamlines Sales Tax project. Therefore, you need to know how Kansas sales and use tax applies to your company's sales and services. Your company fabricates various types of illuminated signs, including pole or pylon-mounted signs, sign cabinets, channel letter signs, awning signs, and signs with letters mounted on raceways. It often subcontracts with local sign companies to install these signs. It also contracts with local sign companies for maintenance, service, and sign removal. Your letter identifies the different kinds of sales and services your company engages in. You ask how Kansas sales and use tax apply to the listed scenarios. Before discussing the scenarios, I will provide an overview of how sign companies are treated under the Kansas sales and use tax law.

A year and a half ago, the department issued EDU-27, *Sales Tax Guidelines for Fabricators*. It contains the following tax-treatment synopsis for custom sign makers:

**Signs.** Custom sign makers are treated like fabricators. The value added by the fabrication of the sign is subject to tax. Sign makers should claim resale exemption when they buy materials to fabricate a sign from and collect the sales tax on the full selling price billed to their customer for the sign, including charges for setting it in place, bolting it down, and wiring it to existing services. Many other questions that sign makers have are answered by K.A.R. 92-19-18a.

Sign makers sometimes contract to construct a base or make other improvements to real property to support the sign they are fabricating. This is a mixed contract. When a sign maker enters into a mixed contract, the sign fabricator shall charge tax on the entire amount unless the retail sale of the fabricated sign is shown as a separate line item charge that is being taxed on the customer billing. When the billing under a mixed contract contains a separate line item charge for the fabricated sign, the sign maker should determine the tax due on the construction part of the contract by applying the rules for *Mixed Contracts* that are set forth in the *Sales Tax Guidelines for Businesses that Sell and Service Appliances and Electronic Products.*

This discussion shows that a sign maker is treated as the retailer of the signs that it fabricates. When a sign maker agrees to fabricate a sign, it may also agree to provide set-up services at the customer's business. Set-up services are treated as an incidental part of the sale of the sign. *See K.S.A. 2005 Supp. 79-3602(ll).* The following paragraph explains what "set-up services" are and how they are to be treated:

**Set-up services** include placing an appliance, electronic product, or listed item in working order by assembling it, sliding it into an existing opening, locating and fixing it in place, connecting it to existing water or gas services, plugging or wiring it into existing electrical services, connecting it to existing discharge pipes or vents, programming its controls, and so forth. When arranged at the time of a retail sale, charges for set-up services are considered to be part of the selling price and are taxed whenever the sale of the property is taxed. See*Contractor-Retailer Guidelines: Other transactions that are always treated as retail sales with set-up; Sales Tax Guidelines for Businesses that Sell and Service Appliances and Electronic Products. See EDU-26.*

As has been stated, custom sign companies are fabricators that sell their signs at retail. These businesses continue to be treated as retailers of their signs when they contract to perform construction services, such as constructing a base with poles to support their fabricated sign. When they agree to fabricate a sign and to provide construction services, the sign maker has entered into a "mixed contract."

**Mixed contract** means a single contract that calls for the performance of construction services and for the retail sale of tangible personal property. A business that enters into a mixed contract is treated as the consumer of the construction materials that it uses on the project and as the retailer of the goods that it sells under the contract. The tangible personal property being installed or sold at retail can include fabricated or manufactured goods.

When contracting to fabricate a sign and to perform construction services, the department recommends that the sign maker either enter into two separate contracts with their customer or bill their customer as explained in "Signs," which is quoted above. If a sign maker fails to enter into separate contracts or to separately bill for the retail sale of the sign and for the construction services, the sign maker is required to collect sales tax on the entire billing.

Out-of-state sign companies sometimes encounter problems when they contract with local Kansas sign companies to install their signs and do construction work. This is usually because the Kansas sign company treated itself as a contractor before EDU-27 was issued. Now, the sign company is treated as a retailer that sells its fabricated signs at retail and provides set up services as part of the sale. The sign company should also recognize that it may enter into mixed contracts, with one part of the contract being treated as a retail sale of tangible personal property, and the other being treated as a construction services for things like constructing a base for the sign. When you hire a Kansas sign company to *set up* one of your signs, you *can* provide them with a resale exemption certificate and the Kansas sign company should not charge you sales tax on the *set up* work that they bill to you. In turn, you will bill your Kansas customer that buys the sign by charging them sales tax on the total amount that you bill them for the sign, its delivery, and its set up.

This is not the case when you hire a Kansas sign company to perform construction services, such as constructing a base or pylon to support a pole to support the sign. In these cases, the sign installer should provide you with a bifurcated billing that shows one untaxed line-item charge for the *set up* *services* they perform and another line-item charge for taxable or exempt *construction* *services* they perform. You should continue provide them with a resale exemption certificate for *set up* work that they bill to you. You should, in turn, charge the customer sales tax on the total amount that you bill to them for the sign and the set up labor.

The resale exemption certificate will not exempt any taxable construction services that the Kansas sign installer performs for you. You should pay that sales tax that the Kansas sign bills to you on the taxable construction services it performs. The sign company may also bill you "All applicable Kansas sales tax included for construction services." When you rebill your Kansas customer, you should bifurcate the bill into one taxable charge for the sign, its delivery, and its set up, and a separate charge for the construction services. You should collect state and local tax from your customer on the total amount that is billed for the sign, shipping, and set up. For the construction charges, you should indicate "All applicable Kansas sales tax included for construction services." While you may mark up the charges, you should not show the sales tax that you paid to the Kansas sign company on construction services as a separate line item amount.

Please note that construction services are taxed only when performed to existing commercial buildings. When signs are added to a new buildings or when sign pylons or bases are constructed for a new building at the time it is being built, the construction services are exempt from sales tax as being part of the original construction of a building. If the billing given to you by a Kansas sign company has been bifurcated and the construction labor is not taxed, the charges to you should not show sales tax on the sign company's charges for construction services. When you rebill your customer, you should charge sales tax on the sale, delivery, and set up of the sign. When billing for the construction services, you should indicate "All applicable Kansas sales tax included for construction services." If you mark up the construction charges when you rebill your customer, there are no sales tax consequences.

With these things in mind, I will state your scenarios and indicate how sales and use tax apply.

1. Product – We manufacture a sign and ship it to end user.

ANSWER: Tax applies to the total billing to the customer, including any shipping charges.

2. Product – We manufacture a sign and ship it to subcontractor for installation (set up).

ANSWER: The total billing to the customer is taxable, including the shipping and set up charges. You may provide the subcontractor with a resale exemption certificate for the set up services.

3. Installation Labor – When installation and product price are combined.

ANSWER: Total billing to customer is taxable, including installation, shipping, and any construction services when the charges are lumped together.

4. Installation Labor – When invoiced separately from the product.

ANSWER: Total billing to customer taxable, including shipping and set up charges, if only set up services are being separately billed. (See explanation of "set up" services above.) If a separate contract is entered into for construction services, the contract for the sale of the fabricated sign and for its delivery and set up are fully taxed. For the separately billed construction contract, the subcontractor will charge and collect tax from you based on whether or not the job qualifies for exemption. Regardless of whether or not you pay tax to the subcontractor, you should bill your customer: "All applicable Kansas sales tax included for construction services." There are no sales tax consequences if you mark up the amount when you rebill your customer.

5. Installation Labor – When invoiced separately from the product.

ANSWER: Set up services are taxable as part of the sale of the sign. (See explanation of "set up" services above; See definition at K.S.A. 2005 Supp. 79-3602(ll)). Construction services are taxed as discussed in scenario # 4.

6. Freight costs - When shipped directly to the end user.

ANSWER: Shipping charges are part of the tax base for a retail sale in Kansas and are taxed if the retail sale is taxed, regardless of how the shipping charges are billed.

7. Freight costs – when shipped to sub-contractor for installation.

ANSWER: Shipping charges are part of the tax base for a sale in Kansas and are taxed if the sale is taxable, regardless of how the shipping charges are billed.

8. Permits Only – Invoiced separately, when site work cancelled without completion.

ANSWER: Permit costs are overhead expenses of the sign company. When your customer reimburses you to cover your permit costs, the charges are considered to be part of the total receipts from the customer for the sale or service. Accordingly, these charges are subject to tax when recovered from the customer on a taxable billing. When there is no taxable sale and when no taxable labor services are performed, the permit charges would not be part of a taxable sale or service and would not be taxed.

9. Permits – We manufacture a sign and ship it to end user.

ANSWER: If the sale of the sign to the customer is taxable, the customer's payment to reimburse the sign company for its purchase of the construction permits is taxable.

10. Survey Only – Definition: Service work performed to inspect property to determine what type of signs would best fit customers needs. Survey may include photos, measurements, plot plans, and city code checks.

ANSWER: Not taxable if billed before the contract for the sign fabrication is entered into. Taxable if lumped together with charges for the sign, delivery, and set up or as part of taxable construction services.

11. Survey with addition work performed (manufacturing and installation) billed separately.

ANSWER: Not taxable if billed before the contract for the sign fabrication is entered into. Taxable if lumped together with charges for the sign, delivery, and set up or as part of taxable construction services.

12. Service – neon light repair, replacement of ballasts or transformer, repair metal work, secure faces, replace light bulbs or electric components.

ANSWER: Kansas taxes the gross receipts received from the services of installing, applying, repairing, servicing, altering, and maintaining tangible personal property or property that was once tangible personal property. This includes signs. *K.S.A. 2005 Supp. 79-3603(p), (q), & (r).*Accordingly, all of the services listed in this scenario are taxable. Since these services ordinarily would only be done to existing commercial property, the services would not qualify for exemption as being original construction.

13. Removal of old signage by subcontractors.

ANSWER: Total billing to customer taxable, including shipping. This is considered to be altering property that was once tangible personal property.

14. Are there any tax differences for new construction vs. replacement of existing signage?

ANSWER: Yes. The difference is explained on page 3, in the paragraph that begins "Please note. . . ."

You also ask if consumers' use tax applies to these transactions. The answer is generally no. As has been discussed, you are required to collect retailers' use tax on the sale, delivery, and set up of the signs. You do not accrue tax on materials withdrawn from your untaxed inventory. Like sales tax, the Kansas retailers' use tax is applied to the total amount that you charge your customer for the sign, its delivery, and its set up. This will include the payment you receive for the fabrication services you perform.

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: 11/17/2006 Date Modified: 11/17/2006**