**Opinion Letter**

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| **Letter Number:** | **O-2003-008** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Recreation facilities located in multiple cities.** |
| **Keywords:** |  |
| **Approval Date:** | **11/19/2003** |

**Body:**

Office of Policy & Research

November 19, 2003

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RE: Your letter dated November 5, 2003

Dear XXXX:

Thank you for your recent letter. You represent a client who is developing a recreation facility for golf and other sports. Most of the facility will be located in AAAA county. However, a regulation nine-hole golf course and a par-three golf course will be located in both AAAA county and BBBB county. Approximately 54.75% of the nine-hole course and 70.75% of the par-three course will be in BBBB. The BBBB and the AAAA impose sales tax at the same rate.

You ask how your client should collect and remit local sales tax given the fact that the two course are located in two counties that impose local sales tax. In your letter, you quote from Notice 03-10 and indicate that the advice seems to offer mutually exclusive and alternate places for collection of state, county and city sales tax.

Your reliance on Notice 03-10, while understandable, is somewhat misplaced. Notice 03-10 discusses where local tax on a transaction is sourced under the new destination-based sourcing rules. The destination-based sourcing rules do not purport to source sales or create a presumption as to the place of sale *within* a business. Accordingly, Notice 03-10 does not address the issue of how local sales taxes apply to a business that is located in two counties that impose local sales tax. As with the new destination-based sourcing rules and notice, the rest of the Kansas statutes, regulations, or case law contain nothing that directly addresses how local sales taxes applies to a single business that straddles two local taxing jurisdictions.

What activities are taxed also needs to be clarified. There are four impositions statutes at issue here. One is for the sale of tangible personal property. The other three are for admission, participation in sports and recreation, and the payment of membership dues that allow a person to use facilities for recreation or entertainment. K.S.A. 2002 Supp. 79-3603(e) taxes the gross receipts from the sale of admissions to any place providing amusement, entertainment, or recreation services. K.S.A. 2002 Supp. 79-3603(m) taxes "the gross receipts from fees and charges by . . . businesses for participation in sports, games and other recreational activities. . . ." K.S.A. 2002 Supp. 79-3603(n) taxes "the gross receipts from dues charged by . . . businesses, payment of which entitles a member to the use of facilities for recreation and entertainment." The last two impositions were enacted in 1970, after the Supreme Court had held that the imposition on admission charges did not extend to line charges for league bowling. *1970 Kansas Session Laws Chap. 389, Sec. 2;* *Grauer v. Director of Revenue, 193 Kan. 605, 396 P.2d 260 (1964).* While there may be some conceptual overlap, these impositions are generally distinct impositions on different activities.

Based on your description, it is unclear whether your client will charge customers membership dues. If membership dues are charged, it is unclear what payment of the dues will secure for a member. When membership dues are charged, there are often different classes of dues-paying members, with some membership classes gaining the use some parts of the facility but not others. It is also unclear whether your client will charge customers for admission to the facilities.

What is clear is that your client will sell items at retail, such as sporting equipment and food, meals, and drinks. Your client also will charge customers a fee for participation in sports. These charges include green fees, fees for use of the driving range, and fees for participation in soccer, flag football, and volleyball, among others. Some of these activities will take place wholly within AAAA, while other will take place in both counties.

Many states impose local sales taxes. I have found only a handful of state determinations that discuss how local sales tax applies to a store or business that is located in two local taxing jurisdictions. Two of these determinations are useful here.

In *New York Advisory Opinion No. TSB-A-82(18)S, 05/11/1982*, the New York Technical Services Bureau was asked to explain the taxation of a mall that was located partially within and partially without the City of Utica. The Opinion advised that vendors located wholly outside the city should only collect state sales tax while those located wholly within the city should collect both city and local sales tax. For vendors located in both taxing jurisdictions, the Bureau advised that sales would be subject to the tax where the cash register is located. Sales of tangible personal property would take place at the cash register regardless of whether the business was located in the two taxing jurisdictions. The advisory opinion did not offer advice on how local tax should apply if the cash register itself was located in the two different taxing jurisdictions.

In *City of Pomona v. State Board of Equalization*, 1. Cal. Rptr 489, 53. Cal. 2d 305, 347 P.2d 904 (1959), the California Supreme Court considered how local sales tax applied to a single retail store that was located in two cities. The court held that sales made by a department of the store that was located within one taxing jurisdiction should be sourced to that taxing jurisdiction. Where it was impractical to source sales from one department to one jurisdiction or another, the court held that it was appropriate to apportion the local sales tax to both jurisdictions.

In the case of your client's enterprise, some of the retail activities appear to take place entirely within the AAAA. These activities appear to include all of those that take place within the domed facility and the club house. If the taxable retail transactions that take place within the domed facility and the club house occur wholly within AAAA, the AAAA should receive all of the local sales tax charged on these transactions.

Similarly, some of the activities conducted at the outdoor facilities appear to take place entirely within AAAA. These activities include the use of the driving range, 3-hole teaching course, pitching and putting greens, sand bunker, outdoor miniature golf course, and advanced putting course. If these facilities are wholly within the AAAA, the AAAA should receive all of the local sales tax from charges for use of these facilities or for participating in sporting events held in these facilities.

The par-three and the 9-hole courses are located both in AAAA and in BBBB. The tax imposition is on green fees that allow participation in a round of golf. A round of golf on these courses occurs both in AAAA and in BBBB. Since the local sales tax rate for both counties is the same, there is no issue of what tax rate the golf customer should pay. Customers should be charged state and local sales tax at the combined rate of CCCC on the green fees. When these receipts are allocated by your client on its ST-36 sales tax return, 54.75% of the tax on green fees for use of the nine-whole course should be allocated to the BBBB, while the rest should be allocated to the AAAA. Similarly, your client should allocate 70.75% of the local tax on the receipts from green fees for the par-three course to BBBB on its tax return, while the remainder should be allocated to the AAAA. From an accounting standpoint, this will require the green fee receipts from the two courses to be maintained as a separate account so that the receipts can be allocated between the two counties.

From a conceptual standpoint, it appears that your client should first determine the sale or recreational activity that is being taxed. If the sale or recreational activities take place wholly within one county, your client should remit all of its local sales tax receipts from the sale or recreational activity to that county. If the recreational activities take place in two jurisdictions, receipts should be allocated to the two counties based on percentage of the land that is devoted to the recreational activity that is located in each jurisdiction. Please note that when tangible personal property ("TPP") is sold by a business, the sale usually takes place at the cash register. When TPP is sold, the location of the cash register can be used to determine which local sales tax to collect.

As mentioned, I do not know if your client intends to charge customers dues or admission fees. If your client changes dues or admission fees that allow customers to use facilities in both taxing jurisdictions, the allocation of tax receipts will be more complicated. Similarly, if the two local tax rates change so that there are two rates, there would have to be additional adjustments in the amount of local sales tax charged on green fees so that customers are not overcharged tax on the green fees. These more complicated issues were not raised in your letter. If these issues arise, please advise me and the department will try to assist you in resolving them.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 11/24/2003 Date Modified: 11/24/2003**