**Opinion Letter**

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| **Letter Number:** | **O-2004-003** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Taxation of utility services in Kansas.** |
| **Keywords:** |  |
| **Approval Date:** | **03/19/2004** |

**Body:**

Office of Policy & Research

March 22, 2004

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XXXX

RE: Your letter dated March 8, 2004

Dear XXXX:

Thank you for your recent letter. You work for a Key West, Florida, engineering firm that intends to solicit Kansas residents to file sales tax exemption and refund claims on their behalf for taxes paid on their telephone and utility bills. Your company will retain a percentage of any tax refund or tax exemption entitlement that is obtained. You ask how utility services are taxed in Kansas and how your business should go about filing refund requests and exemption claims.

Intrastate, interstate, and cellular telephone services are subject to state and local sales taxes in Kansas. These telephone services are taxable whether provided to a business or to a residence. *K.S.A. 2003 Supp. 79-3603(b); K.S.A. 2003 Supp. 12-189a.* K.S.A. 2003 Supp. 79-3603(b) excepts certain long distance services from the sales tax imposition.

Sewer and refuse services are not subject to either state or local Kansas sales tax. These services are not taxable whether they are provided to a business or to a residence.

Electricity, water, natural gas, and other fuel that are provided to residential customers for noncommercial use are subject to local sales tax but not to state sales tax. *K.S.A. 2003 Supp. 79-3603(c); K.S.A. 2003 Supp. 79-3606(w); K.S.A. 2003 Supp. 12-189a.* Sales of electricity, water, natural gas, and other fuel to businesses are taxable, unless they qualify for exemption as being consumed in production or as becoming an ingredient or component part of the product being manufactured. The Board of Tax Appeals recently extended exemption for electricity holding that the electricity held becomes a component part of chemicals that are manufactured for resale.

The State of Kansas extends an exemption for electricity, water, natural gas, and other fuel that is consumed in production. *See K.S.A. 2003 Supp. 79-3606(m); K.S.A. 2003 Supp. 79-3602(dd).* The scope of the exemption is further explained in the various exemption certificates cataloged in Publication KS-1520 (9/01). Unlike any other state, Kansas extends this exemption to electricity or gas consumed in cooking equipment used in restaurants, pin-ball machines, pin setting machines, power tools used by mechanics, duplicating equipment located in copy centers, and a variety of similar uses, as well as for industrial manufacturing operations. The scope these exemptions is explained in more detail in the exemption certificates contained in Publication KS-1520 (9/01).

To request a refund on utilities, you must complete the appropriate exemption certificate and provide it to the utility provider. This could be a ST-28B, if the utilities are furnished though one meter, or a consumed-in-production exemption, ST-28C, if only exempt electricity is furnished thought one meter. Non-utility refund request should be submitted to the department using a ST-21, "Instruction for sales and use tax refund application." *(Copy enclosed).* If you need to discuss any additional questions about tax refunds or exemptions that you might have please call toll-free 877-526-7738 between 7:00a.m. and 5:30 p.m., Monday through Friday.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

Enclosure

**Date Composed: 03/25/2004 Date Modified: 03/26/2004**