**Opinion Letter**

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| **Letter Number:** | **O-2009-003** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **"Transfer fee" in conjunction with the sale of rental car company vehicles.** |
| **Keywords:** |  |
| **Approval Date:** | **03/09/2009** |

**Body:**

Office of Policy & Research

March 9, 2009

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RE: Your letter dated March 2, 2009

Dear XXXX:

I have been asked to respond to your recent letter. You have an anonymous client that apparently is a nationwide car rental company. Because it is a car rental company, the company has rental locations in Kansas that are registered as motor vehicle dealers. This allows the dealers to sell the company's rental vehicles that will be retired from its rental inventory because of mileage, model changes, wear and tear, or some other reason.

Someone who is interested in buying a used rental vehicle will contact the company and identify the type of vehicle, color, and options that he or she is interested in buying. If a vehicle cannot be found locally, the rental company conducts a nationwide search of its agent's inventories. Once the search locates a vehicle that satisfies the specification given by the potential buyer, a "sales consultant" will inspect the vehicle and contact the potential buyer. The sales consultant will discuss the condition of the vehicle with the potential buyer and answer any other questions the potential buyer might have. If the potential buyer is satisfied with sales consultant's description of the vehicle, the customer will enter into a "transfer contract" with the rental company. The rental company will then deliver the vehicle from its current location somewhere in the United States to the rental location closest to the potential buyer that is registered as a Kansas motor vehicle dealer.

Each individual rental location in Kansas that sells motor vehicles is required to secure a dealer's license from the department. When a rental location registers as a motor vehicle dealer, it must list its place of business for dealership purposes. The rental agency can only sell vehicles held in the dealer's resale inventory at that location. Similarly, before a vehicle can be sold, it must either be titled to the individual dealer that will sell the vehicle or the dealer must have applied for the title. An application for a title must contain the dealer's business address.

Once a vehicle is transferred to the dealer closest to the potential buyer, the potential buyer is obligated to pay the transfer fee whether it buys the vehicle after inspection or decides not to buy it. You ask if the transfer fee is subject to Kansas sales tax.

The term "transfer fee" is used in K.S.A. 8-1,109, K.S.A. 8-1,116; K.S.A. 8-135; K.S.A. 58-4207, K.S.A. 8-2404, and possible additional Kansas statutes and regulations. When the term "transfer fee" is used in this letter, any discussion of it is limited to a "transfer fee" that is charged to a potential buyer (or actual buyer) under the scenario discussed here. Under this scenario, a potential buyer may either: (1) pay the transfer fee and buy the vehicle or (2) pay the fee and not buy the vehicle.

If the potential buyer buys the vehicle, the taxability issue that is raised is whether or not the transfer fee is part of the tax base or "selling price" of the vehicle. K.S.A. 2007 Supp. 79-3602(ll) defines "sales or selling price." It provides:

(ll) (1) "Sales or selling price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:
(A) The seller's cost of the property sold;
(B) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller and any other expense of the seller;
(C) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
(D) delivery charges; and
(E) installation charges.
(2) "Sales or selling price" includes consideration received by the seller from third parties if:
(A) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
(B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
(C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
(D) one of the following criteria is met:
(i) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;
(ii) the purchaser identifies to the seller that the purchaser is a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or
(iii) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.
(3) "Sales or selling price" shall not include:
(A) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
(B) interest, financing and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;
(C) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser;
(D) the amount equal to the allowance given for the trade-in of property, if separately stated on the invoice, billing or similar document given to the purchaser; and
(E) commencing on July 1, 2006, and ending on June 30, 2009, cash rebates granted by a manufacturer to a purchaser or lessee of a new motor vehicle if paid directly to the retailer as a result of the original sale. *(Underlining added).*

The "transfer fee" that a buyer pays to have the vehicle delivered from a rental location somewhere in the United States to the closest location that is registered as a Kansas motor vehicle dealer is reimbursement to the dealer for the "cost of transportation to the seller." The dealer (seller) can only sell vehicles from the business location listed on its dealer license. Thus, the buyer's payment of the transfer fee is reimburse for the cost of transporting the vehicle to the buyer.

The payment of the "transfer fee" can also be seen as the payment of a "delivery charge" to the potential buyer if the rental company is viewed as a nationwide business that is acting as a seller. Either way, the transfer fee is included in the tax base under K.S.A. 2007 Supp. 79-3602(ll)(1)(D), whenever a vehicle is sold to a potential buyer who paid the transfer fee.

In your letter, you assert "the [transfer] fee does not relate to the taxable sale of the vehicle. . . ." This is incorrect since one of the reasons that the vehicle is transferred to the dealer nearest to the potential buyer is to allow the potential buyer to inspect the vehicle. A buyers' right to inspect goods before acceptance is an integral part of any sale of goods. *See K.A.R. 84-2-310.*

This means that the "transfer fee" is taxable when the potential buyer who paid the fee buys the vehicle after inspecting it. The transfer fee is not subject to sales tax when the potential buyer elects not to buy the vehicle or when the vehicle is sold to another buyer who did not pay the "transfer fee."

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 03/09/2009 Date Modified: 03/09/2009**