**Opinion Letter**

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| **Letter Number:** | **O-2011-009** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Purchase of training videos.** |
| **Keywords:** |  |
| **Approval Date:** | **09/01/2011** |

**Body:**

Office of Policy & Research

September 1, 2011

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RE: Your letter received August 30, 2011

Dear XXXX:

Thank you for your recent letter. Your business is located in Blue Summit, Missouri. It buys training videos produced by XYZ. XYZ is located in Kansas City, Kansas. XYZ has been charging Kansas sales tax on these sales. You ask if this is correct. Taxability of these sales depends on how and where your business takes delivery of the videos.

If XYZ delivers the videos to an ABC facility in Missouri by common carrier, the United States Postal Services, or a XYZ employee or agent, the sale is not subject to Kansas sales tax. If the training videos are transferred to ABC electronically, Kansas tax does not apply as long as the videos are never transferred to ABC in Kansas on a tangible medium such as a DVD or tape.

If a training video is delivered to an ABC facility in Kansas, the sale is subject to Kansas sales tax. If a ABC employee or agent enters Kansas from Missouri and takes delivery of a video here, the sale is subject to Kansas sales tax.

Sales of training videos are taxable in Kansas. In 2005, the department published a Q & A that summarizes how Kansas sales tax applies to photographers, and how taxes on their sales of photographs, CD's, DVD's, video tapes, and other goods are sourced. The Q & A provides in parts relevant here:

Question: How does sales tax apply to photographers and photofinishers?

Answer: (1) *Generally.* In Kansas, photographers and photofinishers are treated like retailers. They must collect tax on the total selling price they charge on their retail sales of photographs, CD's, DVD's, video tapes, and other goods. In determining the selling price, no deductions are allowed for separately stated charges such as sitting fees or for ancillary expenses including travel time, meals, telephone calls, salaries or wages, models, and other similar expenses. Sales tax applies to the sale of photographs, CD's, DVD's, video tapes, and other goods produced to satisfy a contractual agreement entered into by a photographer. Examples of these sales include aerial photographs, security photographs, films, CD's, DVD's, and video tapes that are produced for a specific customer. The tax base for such sales include all of the photographer's expenses as well as any separately stated charges to the consumer. Charges for proofs and sitting fees are subject to tax even when the customer decides not to buy any photographs. As used here, a "photofinisher" includes a photo-refinisher and "photography" includes recording images with a digital or video camera. . . .

(6) *Place of sale.* Under destination-based sourcing rules, local sales tax is sourced to the place where delivery is made to the buyer or buyer's agent in Kansas. This includes Kansas deliveries to an out-of-state resident who enters Kansas, takes possession of photographs here, and then return to his or her home state.

A photographer or photofinisher should not collect Kansas tax when it delivers photographs or other goods to a buyer or the buyer's agent in another state. Tax laws treats delivery as being made in another state when the ship-to address is outside Kansas and delivery is made by: (A) a vehicle operated by the photographer, photofinisher, or its agent; (B) the United State Postal Service; (C) a common carrier; or (D) a contract carrier paid for by the photographer or photofinisher. While Kansas tax does not apply to goods shipped or delivered by a Kansas seller to a buyer in another state, the State of delivery may require the Kansas seller to register and collect its tax on sales made there.

Many businesses in the Kansas City metropolitan area charge Kansas tax on their Kansas sales and Missouri tax on their Missouri sales. If ABC takes delivery of the training videos in Missouri, XYZ Productions may have charged and collected Missouri tax on some of the invoices. If Missouri tax was charged, Missouri law will determine the lawfulness of the charges. This issue isn't raised by the invoice you enclosed with your letter since the invoice contains a line-item charge for*"Kansas state sales tax (8.65%)."*

A number of other states have specifically ruled charges for training videos are taxable charges for the sale of tangible personal property rather than nontaxable charges for the service of producing the video. *See e.g. Ruling of Commissioner, P.D. 05-85, Virginia Department of Taxation, June 8, 2005; Arteffects, Inc. Advisory Opinion, Feb. 21, 1966; New York State Commissioner of Taxation and Finance; Minnesota Sales Tax Fact sheet No. 143.* Some of these rulings note a manufacturer can claim a resale exemption on printed instruction booklets and training videos it buys and packages with its manufactured goods.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 09/02/2011 Date Modified: 09/02/2011**