**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-209** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Conduct of estate sales on behalf of owners and their heirs.** |
| **Keywords:** |  |
| **Approval Date:** | **10/01/1999** |

**Body:**

Office of Policy & Research

October 1, 1999

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Re: Kansas Sales Tax

Dear XXXXX:

Your correspondence of September 27, 1999, has been referred to me for response. Thank you for your inquiry.

Your letter indicates your are in the antique business and will soon begin conducting estate sales on behalf of the owners and their heirs. Your letter describes this process, and your concerns, in pertinent part, as follows:

At these sales, second hand items such as household items, antiques, appliances and other personal belongings are sold in a garage sale fashion over a three day sale at the home of the owner or previous owner.

A dealer, such as ourselves, is enlisted to sort, price, arrange and sell the houseful. The dealer deposits the checks and cash into their own checking account then issues a check to the owner for the total amount less the dealer’s commission and any fees.

By depositing large amounts into our checking account, from local sales, which we did not collect sales tax on, I am concerned about the consequences if we were to be audited someday.

The Kansas sales tax is imposed by K.S.A. 79-3603. Subsection (a) of the statute imposes sales tax on:

(a) The gross receipts received from the sale of tangible personal property at retail within this state;

Exemptions from sales tax are found in K.S.A. 79-3606. Subsection (l) of the statute provides an exemption for:

(l) all isolated or occasional sales or tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 79-3603 and amendments thereto;

The phrase “isolated or occasional sale” is defined in K.S.A. 79-3602. Subsection (j) of the statute provides:

(j) “Isolated or occasional sale” means the nonrecurring sale of tangible personal property, or services taxable hereunder by a person not engaged at the time of such sale in the business of selling such property or services. Any religious organization which makes a nonrecurring sale of tangible personal property acquired for the purpose of resale shall be deemed to be not engaged at the time of such sale in the business of selling such property. Such term shall include: (1) Any sale by a bank, savings and loan institution, credit union or any finance company licensed under the provisions of the Kansas uniform consumer credit code of tangible personal property which has been repossessed by any such entity; and (2) any sale of tangible personal property made by an auctioneer or agent on behalf of not more than two principals or households if such sale is nonrecurring and any such principal or household is not engaged at the time of such sale in the business of selling tangible personal property. (Emphasis added.)

Based on these statutes, we are of the opinion that the sales described in your letter are not subject to Kansas sales tax.

This private letter ruling is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to make an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this private letter ruling.

I trust this information is of assistance. If I can be of further service, please feel free to contact me.

Sincerely,

Jim Weisgerber
Attorney
Tax Specialist

JW:jw

**Date Composed: 10/08/1999 Date Modified: 10/11/2001**