**Private Letter Ruling**

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| **Ruling Number:** | **P-2001-135** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Purchases of asphalt emulsion by out-of-state county.** |
| **Keywords:** |  |
| **Approval Date:** | **12/14/2001** |

**Body:**

Office of Policy & Research

December 14, 2001

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XXXX

RE: Your E-mail of November 14, 2001

Dear XXXX:

Thank you for your recent e-mail. You ask if XXX County, Missouri may claim a Kansas sales tax exemption on purchases of asphalt emulsion from AAA's Arkansas City plant. The employees of the Missouri county takes delivery at Arkansas City. The answer is no. XXX County may not claim exemption from Kansas sales tax when purchases are delivered to their employees in Kansas.

For sales tax purposes, a sale almost always occurs at the time that physical possession of the item being sold is transferred to the buyer. This is consistent with the UCC: "A 'sale' consists of the passing or title from the seller to the buyer for a price. . . ." *K.S.A. 84-2-106.*K.S.A. 84-2-401(2)(a)(2) directs "Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference with the physical delivery of the goods. . . ." These provisions are consistent with the regulation that instructs that when delivery of goods to the buyer is made in Kansas, the transaction subject to Kansas sales:

(a) When tangible personal property is sold within the state and the seller is obligated to deliver it to a point outside the state or to deliver it to a carrier or to the mails for transportation to a point without the state, the retail sales tax does not apply: Provided, The property is not returned to a point within this state. . . .
(c) . . . .However, where tangible personal property pursuant to a sale is delivered in this state to the buyer or his agent other than a common carrier, the sales tax applies, notwithstanding that the buyer may subsequently transport the property out of this state.

The Kansas retailers sales tax act clearly taxes retail sales where delivery is made to the buyer within the Kansas boarder. See e.g. *Ex parte Dixie Tool & Die Co*.*, Inc.*, 537 So. 2d 923 (Ala. 1998). As the regulation implies, it makes no difference that someone enters another state, buys something with the intent to return to their home state and use the item purchase there exclusively, and then return with their purchase to their home state. See *Montgomery Ward & Co. v. Commission of Revenue and Taxation,* 156 Kan. 408, 414, 133 P.2d 1008 (1943).

The Kansas sales tax act governs how sales tax applies to this transaction since the sale takes place wholly within Kansas. Apparently, XXX County, Missouri, believe it is exempt because it is a political subdivision of the State of Missouri. However, the Kansas exemption is limited to:

all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof, other than a school or educational institution, or purchased by a public or private nonprofit hospital or public hospital authority or nonprofit blood, tissue or organ bank and used exclusively for state, political subdivision, hospital or public hospital authority or nonprofit blood, tissue or organ bank purposes. . . .

This policy is reflected in an information guide on "Sales and Use Tax for Kansas Political Subdivisions.," Publication KS-1527(Rev. 11/00), in a foot note on the first page of text:

\*Political subdivisions of other states are not exempt from Kansas Retailers' Sales Tax.

The department of revenue has consistently held that when delivery is made in Kansas to an entity of another state, the sale is subject to Kansas sales tax even though the same purchase is exempted by the laws in the entity's home state. The department has also pointed out that if the entity does not take delivery in Kansas but has the sales item shipped to the home state, Kansas does not tax the transaction. Thus, for most sales, the problem can be avoided by having the Kansas vendor either mail the item being purchased to the buyer or by the Kansas vendor shipping the item being sold to the home state on its vehicles.

Under Kansas law, sales tax is a debt from the consumer or user to the retailer. *K.S.A. 79-3604.*This means that your company can pursue XXX County, Missouri, in Kansas courts for the tax that is due and owing your company. See e.g. *State of Missouri, ex rel v. H. D. Lee Co.*, 174 Kan. 114, 254 P.2d 291 (1953).

I hope that I have answered all of your questions. If you need to discuss this matter further, please call me at 785-296-3081. This is private letter ruling. It 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 ruling.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 12/27/2001 Date Modified: 12/28/2001**