**Private Letter Ruling**

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| **Ruling Number:** | **P-2004-019** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Excavating business using backhoes, loaders, excavators, boring machines and concrete crushers.** |
| **Keywords:** |  |
| **Approval Date:** | **06/17/2004** |

**Body:**

Office of Policy & Research

June 17, 2004

XXXXXXXXXX
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XXXXXXXXXX

Dear XXXXXXX,

This is a formal response to your letter dated May 14, 2004. In it, you asked how the Kansas retailer’s sales tax applies to your business.

Your letter set forth the pertinent facts:

We are an excavating business. We use backhoes, loaders, excavators, boring machines, concrete crusher, etc. We dig basements, dig underground utilities, do road bores and some trucking . . . We do work for farmers. We lay electric lines to center pivots and do repairs.

The service of digging, drilling and boring in soil or rock (excavation) is not subject to Kansas retailers’ sales tax. If you install something such as electrical lines you must separately bill for the excavation services. The installation of any tangible personal property is taxable, unless performed in connection with the original construction of a building or facility; or if performed in repair or maintenance of a residence.

The Kansas retailers’ sales tax law imposes tax on “the gross receipts received for the service of installing or applying tangible personal property . . .except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building . . .” K.S.A. 79-3603(p).

“Original construction” means “the first or initial construction of a new building. . .and includes the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence [emphasis added], shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances.” K.S.A 79-3603(p)(1).

Because of the exception for residences, the services performed by you at a residence are not subject to tax. This exemption extends to apartments, nursing homes, dormitories and other similar place where people reside.

The installation or repair services performed by you at a site other than a residence are subject to tax unless the non-taxable services are separately billed or separately stated as a line item on a bill. This means that charges for excavation work may be exempted by separately billing them or by billing them as a separate line item on a bill that involves excavation work and installation or repair services. A billing for excavation services only, that does not involve any installation services, is considered to be separately billed and exempt. This is because of the case of *In re Bernies’ Excavating Services, Inc*., 13 Kan. App.2d 476, 772 P.2d 822 (1989). In that case the court ruled that the gross receipts from excavation services performed are not subject to Kansas retailers’ sales tax imposed under K.S.A. 79-3603(p).

Stated simply, there are several situations that are exempt or excepted from the imposition of sales tax on excavation services:

Excavation services performed in connection with the original construction of a building or facility.

Excavation services performed in connection with remodeling of a residence.

Excavation services performed at any site, if these services are separately billed or separately stated as a line item on a bill.

This is a private letter ruling pursuant to K.A.R. 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This ruling will be revoked in the future by the operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or published revenue ruling, that materially effects this private letter ruling. If I may be of further assistance to you, please contact me at your earliest convenience at (785) 296-5330.

Sincerely,

Mark Ciardullo
Tax Specialist

**Date Composed: 06/28/2004 Date Modified: 06/29/2004**