**Private Letter Ruling**

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| **Ruling Number:** | **P-2004-036** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Diesel fuel used to transport an aggregate (rock) product from crushing plant to stockpile.** |
| **Keywords:** |  |
| **Approval Date:** | **06/30/2004** |

**Body:**

Office of Policy & Research

June 30, 2004

XXXXXXXXXX
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Dear XXXXXXXXXX,

This is a formal response to your inquiries regarding the application of the Kansas retailer’s sales tax to your business. Specifically, you stated:

About 10-15 years ago, XXXXXXXXXX had a sales tax audit. At that time we were told that any diesel fuel used to transport an aggregate (rock) product from the crushing plant to the stockpile is “not” exempt from sales tax. At that time, I paid the penalties charged to us. From that day forward, I have added the cost of the diesel fuel used to transport the product to the stockpile on my monthly sales tax returns. Is this fuel taxable or non-taxable?

Also, I have been paying sales tax (per auditor) on the fuel used by our front-end loader that puts the aggregate into the customer’s trucks. Is this fuel taxable or non-taxable?

Kansas sales tax law imposes tax on the sale of tangible personal property and enumerated services. However, K.S.A. 79-3606(n) provides a tax exemption for all sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property for ultimate sale at retail within or without the state of Kansas. "Property which is consumed" includes tangible personal property which is essential or necessary to and which is used in the actual process of and consumed, depleted or dissipated within one year in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, which is not reusable for such purpose. K.S.A. 79-3602(dd).

In Docket No. 91-44-DT, the Board of Tax Appeals examined the exemption in K.S.A. 79-3606(n) and decided that the following two processes are not essential or necessary to an integrated rock production:

#8. After the rock is crushed to the finished size, it is transferred to a stockpile. Conveyors, stockpile trucks, front-end loaders and a scraper are used for this job. Once again, a diesel-powered electric generator is necessary to operate conveyors, and diesel fuel is used in the trucks, front-end loaders, and scraper.

#9. Material is loaded from the stockpile onto customer's trucks. Diesel fuel is consumed by a front-end loader.

Thus, the diesel fuel used in these processes is not exempt from Kansas retailer’s sales tax. You should continue to add the cost of the diesel fuel used to transport the product to the stockpile to your monthly sales tax returns. You should also continue to pay sales tax on the fuel used by your front-end loader that loads the aggregate onto customers’ trucks.

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.

I sincerely apologize for the delay in answering your letter. If I may be of further assistance to you, please contact me at your earliest convenience at (785) 296-5330.

Sincerely,

Mark Ciardullo

**Date Composed: 07/06/2004 Date Modified: 07/09/2004**