**Private Letter Ruling**

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| **Ruling Number:** | **P-2005-002** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Rentals of party and event equipment, including tents, tables, chairs, and tableware, across the State line.** |
| **Keywords:** |  |
| **Approval Date:** | **02/28/2005** |

**Body:**

Office of Policy & Research

February 28, 2005

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RE: Your letter dated February 17, 2005

Dear XXXX:

Thank you for your recent letter. You are the president of a Missouri rental company that is located near the Kansas state line. You rent party and event equipment, including tents, tables, chairs, and tableware. You either deliver the rented equipment to your customer using your truck or the customer takes delivery at your Missouri business location. You ask a number of questions about how Kansas sales tax applies to your rentals.

Before answering your questions, two things need to be addressed. First, your letter suggests that you believe that rentals to caterers in Kansas are tax exempt. This is a common misperception. These rentals are taxable. In Kansas, rental equipment is considered to be used by the caterer in providing its service rather than being resold or re-rented by the caterer to its customer.

The law in Kansas is well established that a service provider must pay sales tax when it buys equipment to use in its business operations. *Southwestern Bell Tel. Co. v. State Commission of Revenue and Taxation*, 168 Kan. 227, 212 P2d 363 (1940) This requires caterers to pay sales tax when they buy dishes, tables, chairs, silver, linens, kitchen utensils, tents, and other durable items to use in their business. Title to these articles remain with the caterer. The cost of these items are overhead costs to the caterer that the caterer recovers, along with profit, when customers are billed for the catering service. These items are not being resold to the customer but are viewed as being used by the caterer in providing a taxable service. *Southwestern Bell Tel. Co. v. State Commission of Revenue and Taxation*, 168 Kan. 227, 212 P2d 363 (1940).

When a caterer rents catering equipment instead of buying it, the caterer is required to pay sales on the rental charges. This is because caterers are not in the business of renting equipment. Instead, they are using the rented equipment just like they would be doing if they had purchased the rental items themselves. Typically, a caterer recoups its rental costs by increasing the catering charges. Many caterers increase their catering charge by a fixed amount, such as $3.00 per person for tableware. This kind of billing shows that the caterer is increasing charges for its services, and not reselling the items that it rented.

The only businesses that can claim a resale exemption from a rental company would be other rental company. These rentals can happen when another rental company needs rental property that it does not have in inventory. While many caterers may claim to be a rental company, they would have to hold themselves out as renting equipment to the general public in addition to providing catering services. This would be reflected in yellow page advertising, other advertising, flyers, the inventory of products that the business hold in rental inventory, and so forth.

The second thing that needs to be addressed is the place of sale. Generally, a retail sale takes place when a customer takes delivery of and inspects the item being sold. This same rule applies to rentals and leases. Thus, when you deliver rental property into Kansas, it is a Kansas sale and you are required to charge Kansas tax on the transaction. When a Kansas customer takes delivery in Missouri, it is a Missouri sale and Missouri sales tax should be collected on the transaction. K.A.R. 92-19-55a(b)(9), *In-state rentals for out-of-state use*; K.A.R. 92-19-55a(b)(10), *Out-of-state rentals for in-state use*. If, for some reason, the customer who took delivery of the rental property in Missouri rents it for more than 30 days in Kansas, Kansas tax would be due on the rental charges after the thirtieth day. K.A.R. 92-19-55a(b)(10).

With these two things in mind, I will answer your questions:

**Scenarios**
1. Kansas residents visits your Missouri rental facility and rents equipment that you deliver to their Kansas residence using your truck. Payment for the rental is made at the facility.
**ANSWER:**Your business delivers the property to a Kansas address using your truck, therefore Kansas state and local tax is due based on the address of the Kansas residence.

2. Kansas resident personally visits your Missouri rental facility and places an order. Kansas resident takes delivery of equipment at the Missouri facility, transports it to their residence in Kansas and returns it to the Missouri.
**ANSWER:**Your Missouri rental business delivers the property to the customer in Missouri. Therefore Missouri sales tax applies. If the rental runs over thirty days and the property remains in Kansas, Kansas tax is due on the rental charges made after 30 days.

3. Kansas resident calls, faxes or e-mails an order to your Missouri rental facility and your Missouri rental facility delivers the equipment to a Kansas address using the Missouri facility's truck. Payment if made over the phone, by fax or e-mail.
**ANSWER:**Your business delivers the property to a Kansas address, therefore Kansas state and local tax is due based on the address of the Kansas residence.

4. Missouri caterer orders rental equipment from your Missouri rental facility on behalf of the caterer's clients. Missouri rental facility has a Missouri Form 149, "Sales/use tax exemption certificate" on file from such caterer. Caterer pays Missouri rental facility for the rental equipment, not the caterer's client. Client of the caterer are Kansas residents. Missouri rental facility delivers to Kansas resident on behalf of the caterer using Missouri rental facility's trucks.
**ANSWER:**Your rental business delivers the property to a Kansas address, therefore Kansas state and local tax is due based on the Kansas delivery address. The Missouri resale exemption certificate does not control the Kansas transaction since Kansas law does not treat this as a sale for resale and because the homeowner is paying for the rented property --- not the caterer.

5. Missouri caterer orders rental equipment from Missouri rental facility on behalf of caterer's Kansas client. Missouri rental facility does **NOT** have a Missouri Form 149, "Sales/use tax exemption certificate" on file from the caterer. Caterer pays Missouri rental facility for the rental equipment, not the caterer's client. Client of the caterer is a Kansas resident. Missouri rental facility delivers to Kansas address on behalf of the caterer using Missouri rental facility's trucks.
**ANSWER:**Your business delivers the property to a Kansas address, therefore Kansas state and local tax is due based on the address of the Kansas residence.

6. Kansas caterer orders rental equipment from your Missouri rental company on behalf of the caterer's client. Caterer has a Kansas Form ST-28A, "Resale Exemption Certificate" on file from such a caterer. Caterer pays Missouri rental company for the rental equipment, not the caterer's client. Clients of the caterer are Kansas residents. Your Missouri rental facility delivers to Kansas resident on behalf of the caterer using Missouri rental facility's truck.
**ANSWER:**Your business delivers the property to a Kansas address, therefore Kansas state and local tax is due based on the address of the Kansas residence. The caterer's Kansas "Resale Exemption Certificate" should not be honored because a caterer in Kansas cannot claim a resale exemption when renting equipment that it uses to provide its service.

7. Kansas caterer orders rental equipment from your Missouri rental company on behalf of the caterer's client. Caterer does **NOT** have a Kansas Form ST-28A, "Resale Exemption Certificate" on file from the caterer. Caterer pays Missouri rental company for the rental equipment, not the caterer's client. Clients of the caterer are Kansas residents. Your Missouri rental facility delivers to Kansas resident on behalf of the caterer using Missouri rental facility's truck.
**ANSWER:**Your business delivers the property to a Kansas address, therefore Kansas state and local tax is due based on the Kansas delivery address. The fact that the caterer has or does not have a Kansas "Resale Exemption Certificate" on file with you does not change the taxability of this Kansas rental since these rentals to caterers are taxable in Kansas.

Please note that unlike Missouri, Kansas does not have a broad-based exemption for organization that are exempt for federal tax purposes under IRC Section 501(c)(3). In addition, the Kansas state and local use tax rates are now identical to the sate and local sales tax rates. Since you do not have a Kansas office in Kansas or warehouse items in Kansas, you should be collecting Kansas retailer's use tax.

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. Please let me know if you have additional questions.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 03/02/2005 Date Modified: 03/02/2005**