**Opinion Letter**

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| **Letter Number:** | **O-1999-025** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Taxation of utilities.** |
| **Keywords:** |  |
| **Approval Date:** | **10/21/1999** |

**Body:**

Office of Policy & Research

October 21, 1999

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RE: Your letter of October 13, 1999

Dear XXXX:

I have been asked to answer your letter received earlier this month. In it, you ask about the taxation of utilities.

To determine the taxation of utilities under Kansas law, the retailers’ sales tax act’s imposition section and exemption section must be read along with the local sales tax act. The sales tax act contains a broad imposition on sales of utilities. It then exempts the sale of such utilities for noncommercial residential use, ag use, oil severance, and for certain other entities that are exempted under K.S.A. 79-201b *Second through Sixth*, which includes many nursing homes. The local sales tax act then imposes local sales tax on certain uses.

The imposition section of the retailers’ sales tax act imposes state sales tax on:

the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation under the provisions of this act, and whether furnished by municipally or privately owned utilities...*K.S.A. 79-3603(c)*

The exemption section exempts:

all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes: (1) To residential premises for noncommercial use by the occupant of such premises; (2) for agricultural use and also, for such use, all sales of propane gas; (3) for use in the severing of oil; and (4) to any property which is exempt from property taxation pursuant to K.S.A. 79-201b Second through Sixth. As used in this paragraph, "severing" shall have the meaning ascribed thereto by subsection (k) of K.S.A. 79-4216, and amendments thereto *K.S.A. 79-3606(w)*

The local sales tax act imposes local sales tax on:

The following sales shall be subject to the taxes levied and collected by all cities and counties under the provisions of K.S.A. 12-187 et seq. and amendments thereto:

(a) All sales of natural gas, electricity, heat and water delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises and all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes for agricultural use;
(b) All sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises;
(c) All sales of intrastate telephone and telegraph services for noncommercial use. *K.S.A. 12-189a*

The result of these impositions and exemptions is that Kansas homeowners are required to pay local tax on their utilities services, while commercial establishments generally are required to pay both state and local sales tax on the services.

In addition to the exemptions and exception quoted above, Kansas law exempts utilities that are consumed in production and ones that become ingredient and component parts of something being manufactured for resale. Examples of a utility that is consumed in production is the electricity consumed in running a stamping press at a automobile manufacturer. An example of a utility service that is an ingredient or component part would be water that is mixed with syrup in a soft drink bottling operation.

I have enclosed a copy of form BT/st-28B (Rev. 2/99) that can be used to claim exemption. This form provides further discussion of when utilities are exempt under Kansas laws. Please note that, contrary to what your letter seems to imply, there is no exemption simply because someone has a tax number. To be exempt, retailers must consume the utility in a way that qualifies as exemption under one of the statutory exemptions. Most commercial enterprises must pay both state and local tax on their utility purchases and may not claim exemption.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

Enclosure

**Date Composed: 03/28/2000 Date Modified: 10/10/2001**