**Opinion Letter**

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| **Letter Number:** | **O-2001-010** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Country clubs.** |
| **Keywords:** |  |
| **Approval Date:** | **02/12/2001** |

**Body:**

Office of Policy & Research

February 12, 2001

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RE: Your letter to Robert Lewis

Dear XXXX:

I have been asked to answer the letter that you sent to audit manager Bob Lewis in December. In it, you make two claims about how Kansas sales tax law should apply to country clubs. The first is that the unused portion of dining room minimums should not be subject to Kansas sales tax. The second is that double taxation occurs when country clubs are required to pay tax on their purchases and collect tax on membership dues. You assert there is “double sale tax” since members are the ultimate consumers of everything purchased by the clubs. You ask the department to discuss these issues so that you can review our position with the country club’s board of directors.

K.S.A. 79-3603(n) imposes sales tax on “the gross receipts received from dues charged by public and private clubs.” The Black’s Law Dictionary definition of “dues” is: “As applied to clubs and other membership organizations, refers to sums paid toward support and maintenance of same and as a requisite to retain membership.” A dining room minimum charge is a fee owed by a club member if the member fails to purchase a fixed dollar amount of meals or drinks at the club during a billing period. Normally, if the minimum is not met, the member is billed the difference between the minimum dining fee and the total dollar amount of their meal purchases for that period. The fee is mandatory. A member’s refusal to pay is grounds for terminating his or her membership. Since payment of the fee is required to retain membership, its payment is the payment of a “due” which is subject to sales tax under K.S.A. 79-3603(n) See *Crane Creek Country Club v. Idaho State Tax Commission*, 841 P.2d 410 (Id. Sup. Ct. 1992); *Florida Technical Assistance Advisement*, No. 93A-020.

Your second contention is that country clubs should be allowed to buy everything tax exempt since the members pay taxable membership dues to the club. You assert that club members are the:

ultimate consumers of all expenses, utility bills, linens, services, taxes, even insurance. The double sales tax is not justified because the members are the ultimate consumer of each and every sales tax included expense. . . . Our Club’s revenue/dues billing and sales taxes charge both revenue in and sales tax expenses out are definitely double taxing each dollar paid by the ultimate consumer/ members.

Double taxation occurs when the same person is taxed twice during the same taxing period for the same purpose. *Sales and Use Tax*, 68 Am.Jur.2d, Sec. 12 (1993). Here, the country club is a separate and distinct legal entity. It is more that its collective members. It has its own bank accounts, pays taxes, and can hire and fire employees. Accordingly, the same person is not being taxed when dues are paid by the members and when the club makes taxable purchases. Because they are different entities, the Kansas sales tax act can properly tax the club for its purchases and its members for their payment of dues.

As a separate legal entity, the country club operates under a club charter and rules. The club owns what it purchases. Country club members do not have a direct ownership right to the club’s real or personal property. This can be seen in the fact that country clubs charge members for sales of meals and drinks, golf clubs, balls, and other accessories, green fees, and for the exclusive use of the club, such as at weddings or other social events. All of these payments are inconsistent with your claim that the members are the ultimate consumer of what the country club buys. If they were the ultimate consumers, they would own the purchases and could make use of the purchases whenever and however they wish. This is not the case. As noted, the club is a legal entity that is separate and distinct from its members. The club makes purchases in its name and uses what is purchased for its benefit. Thus, there is no double taxation when club membership dues are also taxed.

Double taxation does not occur when a service provider is required to collect tax on their services and pay tax on purchases used to provide the service. For example, there is no double taxation when an amusement operator purchases taxable ride equipment and later charges admission for the ride. *Darien Lake Fun Country, Inc. v. State Tax Commission*, 488 N.Y.Supp. 511 (NY Sup. Ct. Appellate Div, 1986). There is no double taxation when a bowling alley collects sales tax on lane charges and pays sales tax on its purchase or lease of pin setting equipment. *Boise Bowling Center v. State*, 93 Idaho 367, 461 P.2d 262 (1969). Double taxation also does not occur when a juke box vendor is required to pay sales tax on records and collect sales tax when the juke box is played. *Ramco v. Director, Dep. Of Revenue*, 248 N.W.2d 122 (Iowa Sup. Ct. 1976). These cases stand for the proposition that when a commercial enterprise provides a taxable service, the enterprise cannot claim a blanket sales tax exemption for everything they buy to provide the service.

A double taxation argument that is very similar to your was considered and rejected by the Kansas Supreme Court in 1949. In *Southwestern Bell Tel. Co. v. State Commission of Revenue and Taxation,* 168 Kan. 227, 212 P.2d 363 (1949), the Kansas Supreme Court considered and rejected Bell’s contention that its poles, transmission cable, switch boards, telephones and other equipment are exempt because Bell produces a taxable service. The court opined:

Stated succinctly, plaintiff argues that the property in question is used and enters into the processing of and become an ingredient of the service it furnishes. In other words, it argues that its instruments, poles, wire and similar property bears the same relation to its telephone service that a carload of hides would to one engaged in the manufacture of shoes or a carload of flour does to a baker. Plaintiff argues that the works “ingredient” “component part” and “processing should be given their ordinary or generally accepted meaning and that when we do so we must conclude that the legislature knew the sort of service the telephone company was furnishing and in the process of furnishing this service the property in question became a constituent part of it. We find difficulty in following plaintiff in this argument. . . . .

There is one basic principle about our sales tax act. It is that the ultimate consumer should pay the tax and no article should have to carry more than one sales tax. The intention was that in the various steps between a loaf of bread and the wheat field the person who bought the wheat from the farmer should not pay a sales tax nor the mill that bought it from the elevator man nor the jobber who bought the flour from the mill nor the baker who bought the flour from the jobber. To prevent such a result as nearly as possible, G.S. 1947 Supp. 79-3602(k) was enacted. It had to be so. It should be noted that for each step from the wheat field to the bakery the title to the wheat and flour passed. It was brought each time with the idea of the title passing and there being a resale. This is not true with the property in question here. When the telephone company buys a pole and sets it in the ground the pole belongs to it and the title does not pass to anyone of the telephone company’s service. When the baker buys a new oven or the shoemaker a new machine or the shirtmaker a new sewing machine, he pays a sales on these purchases because they are the ultimate consumers, the title has come to rest, and no further transfer of title is contemplated. *Southwestern Bell* at 232-33.

*Southwestern Bell* makes it clear that country clubs should pay sales tax when they purchase sand, grass seed, fertilizers, pool chemicals, lubricants, electricity, water, and other items that they consume in constructing, operating, and maintaining their facility. These charges are not exempted because the club later charges sales tax for the use of the club facilities in the form of dues, admission fees, and fees for participating in sports. A country club’s purchase of these items are taxable for the reasons stated in *Southwestern Bell--*-the country club is the final user of the item and no further transfer of title is contemplated. The others items are not “consumed” in the service provided for payment of dues, green fees, or admission fees any more than the poles, wire, and switching equipment were in *Southwestern Bell.*

I hope this discussion adequately explains the position being taken by the department of revenue and convinces you and the other board member that the club owes the assessed deficiencies.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

cc: Tamara Crider, Shirley Sicilian, Mike Hale

**Date Composed: 02/14/2001 Date Modified: 10/10/2001**