**Opinion Letter**

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| **Letter Number:** | **O-2008-003** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales tax on oil patch services.** |
| **Keywords:** |  |
| **Approval Date:** | **08/27/2008** |

**Body:**

Office of Policy & Research

August 27, 2008

XXXX
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XXXX

RE: Your fax received yesterday

Dear XXXX:

One of your customers has been paying sales tax on charges that you bill for your oil patch services. Recently, the customer refused to pay the sales tax, claiming that Kansas Department of Revenue Bulletin, Vol. III, No. 9 (September 1, 1970), instructs that the services in question are not subject to Kansas sales tax.

The 1970 Revenue Bulletin implemented a 1970 legislative enactment that the Kansas Supreme Court ruled was unconstitutional seven years later. *Kansas City Millwright Co. v. Kalb, 221 Kan. 658, 562 P.2d 65 (1977).* Five weeks after the court handed down its decision in the *Millwright* case, the Kansas legislature enacting a new law to tax labor services. *See 1977 Kansas Session Laws Chap. 337, Sec. 2.*The constitutionality of the new enactment was upheld seven years latter. *In re Tax Appeal of R & R Janitorial Services, 9 Kan. App. 2d 500, 680 P.2d 909 (1984)*. This means that your customer is basing its exemption claim on a thirty-year old department ruling that interpreted a statute that the Kansas legislature repealed in 1977 because the Kansas Supreme Court had held that it was unconstitutional.

K.A.R. 92-19-58 explains when department rulings should not be followed:

(c) A revenue ruling shall cease to be valid when any one or all of the following occur:
(1) The statute or regulation to which the ruling applies is changed in any pertinent part by the Kansas Legislature;
(2) a pertinent change in the interpretation of the statute or regulation is made by a court decision;
(3) the regulation or interpretation is changed in any pertinent part by a department regulation or revenue ruling, whether the change is accomplished by means of a new regulation or revenue ruling or by means of a revision of an existing regulation or revenue ruling; or,
(4) the department rescinds an outstanding ruling issued prior to any given specified date by issuing a general bulletin or notice in the Kansas register.

K.A.R. 92-19-58 provides at lease three reasons that 1970 Revenue Bulletin, Vol. III, No. 9 should not be followed by any Kansas taxpayer. Subsections(c)(1), (c)(2), and (c)(3) clearly apply to the 1970 bulletin and its announcements.

During our telephone conversation, you stated that, prior to its reliance on the 1970 Revenue Bulletin, your customer had been following the directives in Revenue Ruling 19-2002-2, *Sales taxation of drilling contractors, well service providers, and oil and gas producers*, and a Q & A that was issued at the same time. These publications are current. Based on our discussion, it appears that you were properly charging sales tax when you billed your customer for inspection and labor services performed at its well sites.

K.S.A. 79-3651(g) provides:

(g) It shall be the duty of every person who purchases tangible personal property or services that are taxable under this act to pay the full amount of tax that is lawfully due to the retailer making the sale. Any person who willfully and intentionally refuses to pay such tax to the retailer shall be guilty of a misdemeanor and upon conviction shall be punished and fined as provided by subsection (g) of K.S.A. 79-3615, and amendments thereto.

Your customer has a number of remedies that it can call upon if its continues to believe that your charges should not be taxed. The first is to pay the tax to you and then seek a refund from the department for the taxes claimed to be paid in error. Kansas has a three year statute of limitations on refund requests, which means that your customer will not be out of any taxes if it follows this procedure and establishes that your services are not taxable. Another remedy your customer can use is to submit a written request to the department for a letter ruling on the taxability of your charges. If sales tax should not have been charged, we would issue a letter ruling to the customer stating as much. It would also direct you to reimburse the customer for any taxes that you collected in error for the past three years. You would then refund the taxes to the customer and take a credit on your next sales tax return. If your customer follows either of these approaches, your company will no longer be in the middle of a dispute that your customer needs to resolve with the department. Please let me know how you are able to resolve this matter.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 08/27/2008 Date Modified: 08/27/2008**