**Opinion Letter**

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| **Letter Number:** | **O-2009-009** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Items purchased pursuant to the Kansas Appliance Replacement Program (KARP).** |
| **Keywords:** |  |
| **Approval Date:** | **05/12/2009** |

**Body:**

Office of Policy & Research

May 12, 2009

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Dear XXXXXXXXX:

The purpose of this letter is to respond to your letter dated March 24, 2009. In it you ask for an opinion as to whether Kansas retailers’ sales tax would be imposed on the sale of items purchased pursuant to Kansas Appliance Replacement Program (KARP). Under this program the State of Kansas would make full or in the alternative partial payment and the income-eligible Kansas household would pay the remainder of the purchase price to the retailer.

The following is stated in your letter request to the Kansas Department of Revenue:

The Kansas Housing Resources Corporation (KHRC) requests a Private Letter Ruling for sales tax treatment of direct purchases made by KHRC for the new Kansas Appliance Replacement Program (KARP).

KHRC was established pursuant to Executive Reorganization Order No. 30 dated February 10, 2003 (ERO 30), and 2003 Kansas Senate Bill No. 285 which transferred the Division of Housing of the Kansas Department of Commerce and Housing to the Kansas Development Finance Authority (KDFA), effective July 1, 2003 to be organized in accordance with the Kansas Development Finance Authority Act, K.S.A. 74-8901 et seq.,as amended. KHRC's mission is to enhance Kansas communities with housing opportunities.

The purposes of KARP are to promote energy efficiency and capture long-term energy savings for income-eligible Kansas households by replacing ten years old or older high energy usage appliances with new energy efficient models. KARP provides funding towards the purchase of the following new energy efficient appliances: refrigerators, water heaters, window air conditioners, and heating and air conditioning (HVAC) units.

KHRC will receive applications from Kansans ("customers") on a first-come-first-served basis. Applicants who qualify for the program are issued an awards letter and a voucher for each approved appliance. The vouchers will have the customer's name, address, item(s) to be replaced, voucher number, voucher date, voucher amount, and other information. The voucher amount for refrigerators and window air conditioners will be set amounts, while two bids must be obtained by the customer and submitted with their application for water heaters and HV AC units with their voucher amounts determined by the lowest bid for each item.

Customers present their voucher(s) to retailers that will accept the terms of the voucher. Once KHRC is satisfied the retailer satisfactorily complied with the terms of the voucher, KHRC remits payment directly to the retailer up to the lesser of either: (a) the total sales prices of the appliances, plus the installation, delivery and removal of old unit(s); or (b) the face amount of the KHRC-issued voucher. Customers can purchase an appliance that costs more than the stated voucher amount, but will be responsible for remitting payment for the excess directly to the retailer.

K.S.A. 79-3606(b) is a Kansas retailers’ sales tax provision that exempts:

“ all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas” . . .[emphasis added].

K.A.R. 92-19-52 Agency relationships; direct purchases states in part:

“(b) To qualify as a direct purchase. . .any bill, invoice, contract or other evidence of the transaction shall be made out in the name of the entity which qualifies for an exemption under the act, and the payment shall be made on that entity's check, warrant or voucher.”

In order for the portion of the sale that is paid for by the state to be exempt from sales tax the retailer’s sales invoice will need to indicate that the purchaser is the State of Kansas and the income-eligible Kansas household. The portion of the sale that is paid for by the state and by the income-eligible Kansas household should be apparent on all documents relating to the sale. Each retailer who makes a sale upon which the tax is not collected shall maintain records that identify each sale, the amount of the sale, the amount paid directly by the state, the purchaser, the amount paid by the purchaser and the amount of the retailers’ sales tax. Your agency should also supply to the retailer a completed copy of the exemption certificate as issued to your agency by the Kansas Department of Revenue.

It is the opinion of the Kansas Department of Revenue that when purchases are made within the conditions and parameters as set forth in this letter, retailers’ sales tax would only be imposed on the retailer’s receipts that are paid by the income-eligible Kansas household and that the portion of the sale paid for by the State of Kansas would be exempt from Kansas retailers’ sales tax.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 05/13/2009 Date Modified: 05/13/2009**