**Private Letter Ruling**

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| **Ruling Number:** | **P-1998-111** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Project exemptions for tribal entities.** |
| **Keywords:** |  |
| **Approval Date:** | **08/25/1998** |

**Body:**

Office of Policy & Research

August 25, 1998

XXXXX
XXXXX
XXXXX

RE: Your letter of July 30, 1998

Dear XXXXX:

I have been asked to respond to your letter of July 30, 1998, addressed to Mr. Mark Ciardullo. In it, you discuss whether the XXXXX Tribe (the “Tribe”) and its Tribal Government Center qualify for the exemption extended at K.S.A. 79-3606(cc). You argue that the Tribe qualifies for enterprise zone benefits that are available to “any commercial enterprise other than a manufacturing business or a retail business.” K.S.A. 1997 Supp. 74-50,114(g). You assert that the Tribal Government Center qualifies as a commercial enterprise since the Tribe runs gambling operations. You conclude your letter by asking the Department to agree that the Tribe qualifies for such an exemption.

Your request is premature. The appropriate procedure for the Tribe to raise its arguments is to submit a request for a project exemption certificate to the department. I have enclosed a Form PR-70b (Rev. 9/97) for the Tribe to use. Once we receive the completed request, we will review it and issue a determination that either grants or denies the request for project exemption. If the request is denied, the Tribe will have the same appeal rights as any other applicant whose request for a project exemption certificate has been denied.

As I pointed out in my letter to you of June 15, 1998, *Central Machinery Co. v. Arizona Tax Comm’n*, 448 U.S. 160, 164-5 (1980) established that an Indian tribe can avoid paying state sales tax on its purchases of construction materials by negotiating the sale on the reservation, and by arranging to take delivery of, title to, and to directly pay for the goods there. If the Tribe structures the construction contract for its Tribal Government Center in accordance with *Central Machinery,*it can accomplish the same tax saving that would be achieved by securing a project exemption certificate from the State of Kansas. Please call me if you have any additional questions.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

Enclosure

**Date Composed: 09/02/1998 Date Modified: 10/10/2001**