**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-138** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Labor services to install underground wiring by a local political subdivision.** |
| **Keywords:** |  |
| **Approval Date:** | **06/08/1999** |

**Body:**

Office of Policy and Research

June 8, 1999

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Re: Kansas Sales Tax

Dear XXXXX:

Your correspondence of March 30, 1999, has been referred to my attention. Thank you for your inquiry.

Your letter indicates the City of XXXXX is replacing the current aboveground electrical wiring in a defined project area in XXXXX with new underground wiring. All new materials are being used for the project. You ask whether the labor services to install underground wiring would be exempt under the “original construction” rule. Please be advised these services are exempt.

The Kansas retailers’ sales tax is imposed by K.S.A. 79-3603. Subsection (p) of the statute provides for the imposition of sales tax on:

(p) the gross receipts received for the service of installing or applying tangible personal property which when installed or applied is not being held for sale in the regular course of business, and whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate, except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building or facility, the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence or the construction, reconstruction, restoration, replacement or repair of a bridge or highway.
For the purposes of this subsection:
(1) “Original construction” shall mean the first or initial construction of a new building or facility. The term “original construction” shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;
(2) “building” shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;
(3) “facility” shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or of any municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility; and
(4) “residence” shall mean only those enclosures within which individuals customarily live;

K.S.A. 79-3603(p) contains ambiguous provisions for exemption of labor services expended to construct municipal power lines. The statute exempts labor services expended for the original construction of a facility, which by definition includes transmission and distribution lines owned by municipal utilities. Original construction is defined as the first or initial construction of a facility. However, the statute specifically provides that the term “original construction” “shall not include replacement, remodeling, restoration, renovation, or reconstruction under any circumstance [other than weather related disasters].”

The ambiguity arises when an entirely new transmission or distribution line replaces an existing line that has worn out. In one sense, this line is the first or initial construction of a new facility, i.e. the new distribution or transmission line of a public utility. In another sense, it is simply a replacement of an existing line. For your purposes, the Department has held that replacing overhead municipal lines with underground lines constitutes “original construction” and qualifies for exemption of labor services, as provided in K.S.A. 79-3603(p). As noted above, the materials remain subject to Kansas sales tax, even though the labor services are exempt.

This private letter ruling is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to make an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this private letter ruling.

I trust this information is of assistance. If I can be of further service, please feel free to contact me.

Sincerely,

Jim Weisgerber
Attorney
Tax Specialist

JW:jw

**Date Composed: 07/06/1999 Date Modified: 10/11/2001**