**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-176** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Restoring, reconstructing or replacing a building or facility damaged or destroyed by fire or flood.** |
| **Keywords:** |  |
| **Approval Date:** | **08/16/1999** |

**Body:**

Office of Policy and Research

August 16, 1999

XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX

Dear XXXXXXXX:

I have been asked to respond to your letter dated July 1, 1999. In it, you request a private letter ruling on behalf of your client XXXXXXXXXXXX.

In your letter you stated:

The area that needs clarification deals with services performed to install or apply tangible

Personal property for the purpose of restoring, reconstructing or replacing a building or facility damaged or destroyed.

According to Kansas Administrative Regulation 92-19-66(b), subsection (g) “Sales tax shall not be imposed on the service of installing or applying tangible personal property for the purpose of restoring, reconstructing, or replacing a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion, or earthquake. This exemption shall not apply to restoration, reconstruction, or replacement of a building or facility due to normal deterioration resulting from the continuous exposure to the elements, or the obsolescence of the building or facility.”

Specifically, does the above definition of “destroyed by fire, flood . . .” apply in situations where the damage or destruction is due to natural occurrences (acts of God) and in situations where the damage or destruction is due to human or mechanical causes? If there is a distinction made what is the criteria for making the distinction?

In the incident of fire, we have received verbal information by the Department of Revenue that no distinction is between fire caused by an act of God (lightning) and fire caused by human or mechanical defect (faulty wiring), so all fire incidents are exempt.

The rule of strict construction means that ordinary words are given their ordinary meaning. The Kansas retailers’ sales tax act does not define “fire” or “flood”. Therefore, the meaning imparted to these words must be their ordinary and plain meaning.

Black’s Law Dictionary defines fire and flood as follows: “Fire” means “[t]he effect of combustion.” “Flood” means “[a]n inundation of water over land not usually covered by it. Water which inundates an area of earth where it ordinarily would not be expected to be.”

If damage is caused by “fire”, it is immaterial as to how the “fire” occurred. In other words, “fire” caused by and “Act of God” or by any other means is, for purposes of the exemption, the same.

Likewise, if damage is the result of a “flood” that occurs by an “Act of God” or by failure of a manmade device or structure, repair of said damage is within the exemption. Taking into account the definition of “flood” not all damages that occur by the presence or action of water are within the meaning of this word. The service to repair damages that are the result of a broken water pipe (mechanical failure) or rain leaking through a roof (“Act of God”) are not exempt. Only damages caused by a “flood” qualify for the exemption.

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.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC: mdc

**Date Composed: 08/26/1999 Date Modified: 10/11/2001**