**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-52** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Out of state manufacturer making deliveries to Kansas and hiring local contractors to do installation.** |
| **Keywords:** |  |
| **Approval Date:** | **03/04/1999** |

**Body:**

Office of Policy & Research

March 4, 1999

XXXXXXXXXX
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XXXXXXXXXX

Re: Kansas Sales Tax

Dear Ms. XXXXX

Your correspondence of January 30, 1999, has been referred to my attention. Its contents are duly noted. Your letter states, in pertinent part, as follows:

We are writing to you on behalf of our client, a manufacturer/refurbisher of stadium and theater seating, to request a determination as to the proper application of sales and/or use tax.

The manufactured stadium seating is entirely completed at the client plant located in Michigan and then shipped via company owned vehicle or common carrier to its destination in your state. Installation is completed by a local contractor. The refurbished stadium seating is also entirely completed at the plant location in Michigan.

The customer will send a sample chair to our client who will paint, recushion, etc. the chair and return it to the customer for approval. After the customer approves the refurbishing, a local contractor will remove the chairs from the customers location and ship them to our client via common carrier. Upon completion of the project our client will ship the refurbished seating back to the customer and a local contractor will install it.

Most of the sales are made to educational institutions, entities of government, contractors, nonprofit organizations and others. The product is marketed through dealers, independent sales representatives, trade magazines and other new media. The client has potential sales in your state and would appreciate guidance in determining their sales tax liability. (Please cite the statute for future reference.)

Your letter goes on to present a lengthy series of questions. Those questions, and our responses to them, are as follows:

Q1: When our client is selling manufactured seating, are they making sales of tangible personal property or an affixation to realty? What is the tax base? Do exemptions apply?
A1. The sale of manufactured seating is a sale of tangible personal property. [K.S.A. 79-3602(f)]

Kansas retailers’ sales tax is imposed on, “The gross receipts received from the sale of tangible personal property at retail within this state.” [K.S.A. 79-3603(a)] Kansas compensating (use) tax is imposed on, “. . . the privilege of using, storing, or consuming within this state any article of tangible personal property.” [K.S.A. 79-3703]

Exemptions may apply in the case of direct purchases by the state of Kansas, a political subdivision of the state, certain hospitals, blood or tissue banks [K.S.A. 79-3606(b)], direct purchases by certain public or private schools [K.S.A. 79-3606(c)], or purchases by made by certain contractors on behalf of some of these entities [K.S.A. 79-3606(d)] or for the United States government.

Q2. If the sale of manufactured seating is considered an affixation to realty and it is made directly to an educational institution, entity of government, or nonprofit organizations, is it taxable? If so, is the educational institution, entity of government or nonprofit organization liable for use tax or is our client liable for sales tax?
A2. See Answer A1.

Q3. If the sale of manufactured seating is considered an affixation to realty and it is made to a contractor or other business entity, is it taxable? Who is liable for the use/sales tax?
A3. See Answer A1.

Q4. If the sale of manufactured seating is considered a sale of tangible personal property and it is made directly to a contractor or other business entity, is it taxable? Who is liable for the use/sales tax?
A4. The sale of manufactured seating is considered a sale of tangible personal property and if it is made directly to a contractor or other business entity, is it taxable. If your client has nexus with Kansas sales tax would be paid by the contractor or other business entity and remitted by the retailer. If your client does not have nexus with Kansas use tax would be paid and remitted by the contractor or other business entity.

Q5. If a sale of manufactured seating is made to a contractor and resold to an educational institution, government or nonprofit organization considered exempt does the exemption flow through to the contractor?
A5. As a rule, educational institutions, governments or nonprofit organizations which can make direct purchases exempt from tax can obtain a “project exemption certificate” which will allow a contractor to make purchases for use on the specific project exempt from tax. [K.S.A. 79-3606(d), (e) and (cc); K.A.R. 92-19-66e]

Q6. If a sale of manufactured seating is made to a dealer for resale, does our client have a potential sales tax liability?
A6. The Kansas sales tax is imposed on sales at retail. A sale for resale would be exempt from Kansas sales tax.

Q7. What is the taxable base for manufacturing seating? Material plus cost plus overhead or retails [sic] selling price or some other basis?
A7. See Answer A1.

Q8. When our client is refurbishing seating for a customer (working on the property of others) is this considered a service?
A8. Yes. K.S.A. 79-3603(q) imposes tax on, “the gross receipts received for the service of repairing, servicing, altering or maintaining tangible personal property . . .”

Q9. What is the taxable base for a servicer located in Michigan supplying a customer in your state?
A9. Services performed outside the state of Kansas are not subject to Kansas sales and/or compensating (use) tax. Materials brought into the state would be subject to compensating (use) tax.

Q10. If the refurbished seating is completed for an educational institution, government or non-profit organization, does a tax liability exist? Who is liable for the use/sale tax?
A10. See Answer A9.

Q11. If the refurbished seating is completed for a contractor or other business entity, does a tax liability exist? Who is liable for the use/sales tax?
A11. See Answer A9.

Q12. If the refurbished seating is completed for a contractor and resold to an educational institution, government or nonprofit organization considered exempt does the exemption flow through to the contractor?
A12. See Answer A9.

Q13. If the refurbished seating is completed through a dealer-arranged sale, does our client have a sales tax liability in your state?
A13. See Answer A9.

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: 03/09/1999 Date Modified: 10/11/2001**