**Private Letter Ruling**

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| **Ruling Number:** | **P-2000-017** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Waste tire and antifreeze disposal fees.** |
| **Keywords:** |  |
| **Approval Date:** | **04/20/2000** |

**Body:**

Office of Policy & Research

April 20, 2000

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RE: Your letter dated March 30, 2000

Dear Ms. XXXX:

I have been asked to respond to your letter that we received last month. In it, you ask how Kansas sales tax applies to your company imposed waste tire and antifreeze disposal fees. The waste tire disposal fee is charged at the time of a sale of a new tire, and allows the purchaser leave their used tire with you for proper disposal. The antifreeze disposal fee is a similar charge for disposing of antifreeze after you perform a radiator flush and replace the old antifreeze. The fees help your company to recoup its cost for disposal of these hazardous materials. You bill the fees as a separate line item charge. You ask whether or not they should be included in the tax base for sales tax. Please be advised that they should be included in the tax base for Kansas sales tax, just like the cost of the tire and any service charges for mounting and balancing the tire.

The Kansas statute that subjects these fees to sales tax is K.S.A. 79-3602(g), which defines “selling price” as "the total cost to the consumer exclusive of discounts allowed and credited, but including freight and transportation charges from the retailer to the consumer.” Kansas Administrative Regulation 92-19-46 supports this construction. The regulation provides, in relevant part:

Selling price is the total consideration given in each transaction, whether in the form of money, rights, property, promise or anything of value, or by exchange or barter. . . . The term selling price includes the following:

(2) the total cost to the consumer without any deduction or exclusion for the cost of the property or service sold, labor or service used or expended, materials used, losses, overhead or any other costs or expenses, or profit, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether separately billed or segregated on the same bill. . . .

The waste tire disposal fee described in your letter is clearly a service being provided by your company that is a cost or expense associated with its sale of tangible personal property. The disposal service is structured as an integral part of the sales transaction and is billed along with the sale of the tire. This makes it subject to Kansas sales tax. The department has historically taken this position on similar "service" transactions that take place in connection with the sale or rental of tangible personal property, such as alteration charges, gift wrap charges, and charges for setting up or dismantling leased equipment. In your case, the charge for disposing of a tire that your are replacing is, from the customer’s viewpoint and a sales tax viewpoint, as much a part of the new tire sale as the mounting and balancing.

For these reasons, the waste tire disposal fee charged in conjunction with the sale of tires is taxable, whether the fee is separately stated or not. This same determination applies to the disposal fee for antifreeze that is being replaced.

Please note that while your company does not provide the tire disposal service unless a tire is being purchased, other businesses that charge a waste tire disposal fee without selling a tire or providing tire mounting services could exempt the fees in those situations where the customer is not charged for any property or service except for waste disposal. Waste disposal fees would be taxable if the customer is being charged for having tires mounted, or as in your case, is buying a new tire.

I hope that this adequately explains why you should charge tax on these fees. If you have any additional questions, please call me and we can discuss this matter further.

This is a private letter ruling pursuant to K.A.R. 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This ruling will be revoked by operation of law without further department action if there is a change in the controlling statutes, administrative regulations, revenue rulings or case law that materially effects this determination.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 04/20/2000 Date Modified: 10/11/2001**