**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-2002-020** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Materials hauled to a job.** |
| **Keywords:** |  |
| **Approval Date:** | **02/14/2002** |

**Body:**

Office of Policy & Research

February 14, 2002

XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXX

Dear XXXXXXXXXXX:

The purpose of this letter is to respond to your letter dated January 14, 2002.

In your letter you stated:

Per our phone conversation regarding sales or use tax on materials hauled to the job.

As we discussed, one of our divisions is in the business of asphalt paving. If we contract to do an overlay on a highway (non-exempt job), we typically set up an asphalt plant at the job site. Once the plant is set-up we buy oil, sand, & aggregate to mix at the plant. These items are all included in an asphalt mix that is applied to the surface of the road. When we purchase the oil, sand & aggregate from our suppliers, we typically hire a third party independent hauler to deliver the materials to the job. The third party independent hauler is paid separately from the supplier. Would the State require us to remit sales or compensating tax on the third party transportation of these materials to the jobsite?

In the situation you have described, the delivery charges are not subject to Kansas sales or compensating taxes. This statement assumes that your company pays sales or compensating tax on cost of the materials.

However, in most cases involving the sale and delivery of tangible personal property, sales tax is due on the purchase price of the item sold and any delivery, shipping or handling charges. A more complete discussion follows:

The Kansas retailers’ sales tax act makes shipping and handling taxable by including them in the controlling definitions for “gross receipts” and “selling price.” These terms establish the tax base for sales tax. The tax base for goods being sold is the total amount that is billed for the goods. This amount is then multiplied by the sales tax rate to yield, as the product, the sales tax that is due or owing. The terms “tax base” and “measure of tax” are often used interchangeably. In Kansas, the tax base for sales tax is “gross receipts.” see K.S.A. 79-3603(a) through (ggg)*(“there shall be collected and paid a tax at the rate of 4.9% . . . upon: (a)*the gross receipts *received from the sale of tangible personal property at retail within this state.”)*; K.S.A. 79-3602(h).

The statutes define “gross receipts” to mean: “the *total selling price* or the amount received as defined in this act, in moneys, credits, property or other consideration valued in money from sales at retail within this state. . . .” K.S.A. 79-3602(h)(emphasis provided). “Selling price” is defined 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*.” K.S.A. 79-3602(g)(emphasis provided). Thus, the tax base for Kansas sales tax includes: *“freight and transportation charges from the retailer to the consumer*.”

Shipping and handling charges from the retailer to the consumer are also part of the tax base for Kansas use tax. One of our use tax regulations explains: “The actual cost of transportation from the place where the article was purchased to the person using the same in this state is taxable as part of the consideration and purchase price. Transportation costs means freight, express, parcel post, or other hauling charges. It shall include charges for crating, packaging and preparing tangible personal property for shipment.” K.A.R. 92-20-4. This regulation withstood a constitutional challenge in *J.G. Masonry, Inc. v. Department of Revenue*, 235 Kansas 497, 503-8, 680 P.2d 291 (1984), and continues to explain the application of the Kansas use tax law to shipping and handling charges.

This is a private letter ruling and 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

**Date Composed: 02/25/2002 Date Modified: 02/27/2002**