**Opinion Letter**

|  |  |
| --- | --- |
| **Letter Number:** | **O-2010-011** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Testing services performed by third-party testing laboratories.** |
| **Keywords:** |  |
| **Approval Date:** | **01/07/2011** |

**Body:**

Office of Policy & Research

January 7, 2011

XXXXX
XXXXX
XXXXX

RE: Your recent e-mail

Dear XXXXX:

Thank you for your recent letter. Your company routinely pays for testing services performed by third-party testing laboratories in the course of its development of new pharmaceuticals. The department's Audit Services Bureau published a Self Audit Fact Sheet in 2006 that states payments for testing services performed by a laboratory are not subject to sales tax. You have searched for an exemption certificate to provide to third-party laboratories that your company contracts with to test its products. You cannot locate one on the department's web site and ask for assistance.

The Kansas retailers sales tax act (Act) imposes sales tax on retail sales of tangible personal property and on retail charges for services enumerated in the Act. The services that a laboratory performs testing samples are not enumerated in the act as taxable services. Therefore, charges for such services are not taxable. The department does not publish an exemption certificate for such testing services because the services are not taxable in the first place, and therefore, do not need to be "exempted" by the Act for the charges be non-taxable.

Because a testing laboratory does not perform taxable services, all of its purchases are subject to sales tax, including purchases of any blank paper or certificates the laboratory issues to customers to document test results. The delivery of laboratory testing results on a tangible media is not a taxable sale of tangible personal property because the testing results are the true object of the contract for the testing services. This is the same tax treatment accorded to an attorney who drafts a will and provides a paper original or copy to a client or when an accountant completes and files a tax return and provides a paper copy or CD copy of the return to its client. In these examples, the client is not required to present an exemption certificate to the attorney or accountant for the will or tax return. Similarly, your company is not required to present an exemption certificate to a testing laboratory when it pays for testing services.

If a testing laboratory requires your company to provide an exemption certificate to them for testing services, the testing laboratory apparently is acting under the assumption its charges for testing your samples are taxable unless they secure an exemption certificate. This is incorrect for the reasons discussed in this letter. Please provide a copy of this letter to any laboratory that asks for an exemption. This will alert them that their charges for testing services are not subject to Kansas sales tax and they are not required to secure an exemption certificate when charging customers for such services.

You and any testing company that receives a copy of this letter should contact the department at 785-296-3081 and ask to discuss any questions that are not answered by this letter with a tax specialist.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 01/11/2011 Date Modified: 01/11/2011**