**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-144** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Demolition of existing structure and construction of new building.** |
| **Keywords:** |  |
| **Approval Date:** | **06/28/1999** |

**Body:**

Office of Policy and Research

June 28, 1999

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Re: Kansas Sales Tax

Dear XXXXX:

Your correspondence of April 26, 1999, has been referred to me for response. Thank you for your inquiry, and please accept my apologies for the delay in responding.

Your letter indicates your company will be building a XXXXXXXXXXXXXX on an existing lot where the original building was torn down. You ask whether this is considered “new construction” or is it considered remodel work since the new owners are maintaining the same address as the previous building and owners.

The question you present deals with the issue of “original construction.” The controlling statute, K.S.A. 79-3603(p) provides for the imposition of sales tax on:

(p) the gross receipts received for the service of installing or applying tangible personal property which when installed or applied is not being held for sale in the regular course of business, and whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate, except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building or facility, the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence or the construction, reconstruction, restoration, replacement or repair of a bridge or highway.
For the purposes of this subsection:
(1) “Original construction” shall mean the first or initial construction of a new building or facility. The term “original construction” shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;

(2) “building” shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;
(3) “facility” shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or of any municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility; and
(4) “residence” shall mean only those enclosures within which individuals customarily live;

The statute is interpreted, in part, by K.A.R. 92-19-66b. Subsection (d) of the regulation provides:

(d) The service of installing or applying tangible personal property in connection with the original construction, which is the first or initial construction of a new building or facility, shall not be subject to sales tax. The erection of a building or facility on a site previously occupied by a building or facility that has been demolished, razed, or dismantled shall be considered to be original construction if the building or facility is totally new, whether or not the old foundation was also demolished.

Based on the statute and regulation, the project you describe would be considered original construction and so labor services would not be subject to Kansas sales tax. Your purchases of materials and supplies to perform the contract are subject to sales tax.

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.

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: 07/07/1999 Date Modified: 10/11/2001**