**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-1999-253** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Kansas historic theaters.** |
| **Keywords:** |  |
| **Approval Date:** | **11/29/1999** |

**Body:**

Office of Policy & Research

November 29, 1999

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Re: Kansas Sales Tax

Dear XXXXX:

Your correspondence of July 21, 1999, has been referred to me for response. Thank you for your inquiry.

In your letter you note that Senate Bill #76, which was passed by the 1999 Session, extended certain tax benefits to historic theaters. The controlling statutes, K.S.A. 12-1770 *et seq*., were amended to permit cities to issue special obligation bonds to finance the restoration of historic theaters by using sales tax increment financing to pay the principal and interest of the bonds. New Section 1 of the Bill defines certain terms and provides:

New Section 1. For purposes of K.S.A. 12-1770 *et seq*. and amendments thereto:
(a) “Historic theater” means a building constructed prior to 1940 which was constructed for the purpose of staging entertainment, including motion pictures, vaudeville shows or operas, that is operated by a nonprofit corporation and is designated by the state historic preservation officer as eligible to be on the Kansas register of historic places or is a member of the Kansas historic theatre association;
(b) “sales tax increment” means the amount of state and local sales tax revenue imposed pursuant to K.S.A. 12-187 *et seq*., 79-3601 *et seq*. and 79-3701 *et seq*., and amendments thereto, collected from taxpayers doing business within the historic theater that is in excess of the amount of such taxes collected prior to the designation of the building as a historic theater for purposes of this act.

In your letter you note that in order to convert a historic theatre property into a performing arts facility, to expand services to patrons, and/or to meet modern safety codes, it is often the case that a building adjacent to the facility will be purchased or granted into the theatre. In some cases it may be possible to prove or at least assume through available evidence that the new space was once a part of the original theatre property. In others it may be proven or assumed that the two were always independent spaces. In either case, the new space becomes an active and fully integrated part of the theatre, both physically and operationally, as the result of the theatre restoration.

Based on this information you ask two questions. First, “Can the sales tax revenue of a retail space within ancillary property owned by the theatre **that was at one time a part of that theatre** be applied via Senate Bill #76, if over 50% of the ancillary property is used for theatre operations?” Second, “Can the sales tax revenue of a retail space within ancillary property owned by the theatre but NOT ORIGINALLY A PART OF THE THEATRE ITSELF be applied via this legislation, again if over 50% of the ancillary property is used for theatre operation.” (Emphasis in original.)

As noted in subsection (b) of the definitional section set forth above, “ ’sales tax increment’ means the amount of state and local sales tax revenue . . . collected from taxpayers doing business within the historic theater that is in excess of the amount of such taxes collected prior to the designation of the building as a historic theater for purposes of this act.” This language makes it clear that sales tax revenue of a retail space doing business within a building designated as a “historic theater” qualifies for consideration as part of the sales tax increment. It is equally clear that sales tax revenue of a retail space doing business within a building which is not designated as a “historic theater” does not qualify.

The term “historic theater” is defined by subsection (a) of the statute, as set forth above. In our opinion, the term includes only a building(s) which was originally part of the theater. The current percentage of use of the building appears to be immaterial.

Your letter goes on to note that the XXX XXXXX XXXXX has as a tenant a professional basketball team. The team is administered and managed within the original theatre property. The marketing and a portion of the sale of tickets to their games takes place in that theatre property, and a portion of their tickets will be sold through the theatre’s own box office. However, a sizable portion of their tickets are sold at retailers within the greater community, by mail and at the game venue itself. Some may also be sold via the internet.

Based on this information you ask, “May the entire amount of sales tax generated by the tenant be applied via Senate Bill #76, or only that generated by actual sales transactions taking place on theatre property? (Keep in mind that while some final purchases may take place off of theatre property, all of the ‘product’ and its marketing is created, financed and manage on theatre property.)”

In our opinion, all ticket sales which are reported by the tenant as part of their gross receipts from the theater location and upon which they remit sales tax should be considered for purposes of the sales tax increment. This would apply to tickets sold on or off theater property.

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: 12/01/1999 Date Modified: 10/11/2001**