**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-1999-263** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Contract for repair of large household appliances, HVAC equipment, plumbing, and electrical wiring.** |
| **Keywords:** |  |
| **Approval Date:** | **12/10/1999** |

**Body:**

Office of Policy & Research

December 10, 1999

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Re: Kansas Sales Tax

Dear XXXXX:

Your correspondence of November 12, 1999 has been referred to me for response. Thank you for your inquiry.

By your letter you request a private letter ruling on behalf of your clients, XXXXXXXX, XXX. and XXXX XXXX, XX. You indicate the issue for which the letter ruling is requested is: “Whether the Applicants’ contracts for repair of their clients’ large household appliances, HVAC equipment, plumbing, and electrical wiring are exempt from Kansas sales tax under K.S.A. § 79-3603(r) as a contract for services ‘in connection with the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence’ which are not taxable under K.S.A. § 79-3603(p).”

Though lengthy, the facts presented in your letter are important to our decision. Therefore, the pertinent facts are set forth below:

The Applicants offer for sale to the general public renewable 12 month contracts (the “Service Contracts”) which, depending on the plan chosen by the homeowner, provide for the repair, service and, in some cases, replacement of household appliances, furnaces, air conditioners, plumbing, and electrical wiring. While each of the Applicants markets the Service Contracts to a different geographic area, the terms of the Service Contracts offered by each Applicant are identical. The Service Contracts at issue are exclusively sold to residential homeowners for service to be provided in their primary residences. Generally, the Applicants sell ten different plans as follows:

1. XXXXX Appliance Plan. For a monthly fee, the plan provides for the repair or replacement of the homeowner’s primary gas or electric central home heating system, electric central air-conditioning system/heat pump, clothes washer, gas or electric clothes dryer, gas or electric range, gas or electric water heater, and refrigerator.

2. XXXXX Appliance Plan. For a monthly fee, the plan provides for the repair or replacement of homeowner’s primary gas or electric central home heating system, gas or electric clothes dryer, gas or electric range and gas or electric water heater.

3. XXXX Appliance Plan. For a monthly fee, the plan provides for the repair of the homeowner’s primary gas or electric central home heating system, electric central air-conditioning system/heat pump, clothes washer, gas or electric clothes dryer, gas or electric range, gas or electric water heater, and refrigerator.

4. XXXX Appliance Plan. For a monthly fee, the plan provides for the repair of the homeowner’s primary gas or electric central home heating system, gas or electric clothes dryer, gas or electric range and gas or electric water heater.

5. XXXXX Plan. For a monthly fee, the plan provides for the repair of the homeowner’s primary gas or electric central home heating system, clothes washer, gas or electric clothes dryer, gas or electric range, gas or electric water heater, electric central air-conditioning system or heat pump, electric system, refrigerator, freezer, garbage disposal, dishwasher, furnace humidifier, and range hood/exhaust fan. The Applicants will also provide an annual heating inspection.

6. XXXXX Plan plus the Plumbing Option. For a monthly fee, the plan provides the repair services described above in the XXXX Plan and also the repair of the homeowner’s faucets, toilets, clogged drains, shut-offs, water taps, water pipes, and gas pipes.

7. XX Appliance Plan. For a monthly fee, the plan provides for the repair of the homeowner’s gas or electric water heater, refrigerator, gas or electric range, clothes washer, and gas or electric clothes dryer.

8. XXX XXX Plan. For a monthly fee, the plan provides for the repair of the homeowner’s air-conditioning system or heat pump and furnace. In addition, the plan provides for annual inspections of both the air-conditioning system or heat pump and the furnace.

9. XXX XXX XXX Plan. For a monthly fee, the plan provides for the repair of the homeowner’s wiring for his telephone, computer, intercom, stereo, and electrical service and of the flexible gas connectors and natural gas piping.

10. XXXXXX Home Warranty. For a flat fee, from the time at which the homeowner purchases the plan until 12 months after the home’s sale, the plan provides for the repair of the covered home’s central heating system, central air-conditioning system or heat pump, power humidifier, electrical system, plumbing system, water heater, refrigerator, freezer, dishwasher, garbage disposal, clothes dryer, range and range exhaust fan, garage door opener, trash compactor, and central vacuum system.

The Kansas sales tax is imposed by K.S.A. 79-3603. Subsection (r) of the statute imposes sales tax on:

(r) the gross receipts from fees or charges made under service or maintenance agreement contracts for services, charges for the providing of which are taxable under the provisions of subsection (p) or (q);

K.S.A. 79-3603(p) imposes sales tax on the installation or application of tangible personal property. The subsection provides, in pertinent part, that sales tax shall be imposed 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, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence . . . [Emphasis added]

Services that are not taxable under K.S.A. 79-3603(p) are not taxable under K.S.A. 79-3603(r). A discussion of the types of residential repairs and remodeling work that is exempt under K.S.A. 79-3603(p) is included in our Notice 98-02, a copy of which is attached for your review.

Based on the information contained in your letter, we believe the sale of the residential maintenance contracts in question would be exempt from Kansas sales tax. It should be noted, however, the exemption extends only to labor services, not to materials. The contractor would be responsible for paying or accruing the appropriate Kansas sale or use tax on the cost of the materials used at the residence to perform the services.

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

Enclosure: Notice 98-02

**Date Composed: 12/16/1999 Date Modified: 10/11/2001**