**Private Letter Ruling**

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| **Ruling Number:** | **P-2000-010** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Concrete cutting and coring labor services.** |
| **Keywords:** |  |
| **Approval Date:** | **03/23/2000** |

**Body:**

Office of Policy & Research

March 23, 2000

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RE: You letter dated February 24, 2000

Dear Mr. XXXX:

Thank you for your letter that we received late last month. You request a private letter ruling for BBB Company, Inc. You ask whether the concrete cutting and coring labor services done by the company are subject to the Kansas retailers’ sales tax. The services are performed using diamond-tipped blades mounted on saws that range in size from hand-held saws to ones that must be transported by trailer. The services are done to concrete sidewalks, steps, retaining walls, and other concrete structures. Please be advised that these services are subject to Kansas retailers’ sales tax.

The Kansas retailers’ sales tax act imposes tax on:

the gross receipts received for the service of repairing, servicing, altering or maintaining tangible personal property, except computer software described in subsection (s), which when such services are rendered is not being held for sale in the regular course of business, and whether or not any tangible personal property is transferred in connection therewith. The tax imposed by this subsection shall be applicable to the services of repairing, servicing, altering or maintaining an item of tangible personal property which has been and is fastened to, connected with or built into real property. . . . *(K.S.A. 79-3603(q)).*

Concrete structures, such as sidewalks, steps, and retaining walls, consist of tangible personal property (concrete) that has been built into, and has become part of real property. As such, any “servicing” and “altering” that is done to these structures, including cutting and coring them, is subject to sales tax.

This interpretation of K.S.A. 79-3603(q) is consistent with the department’s implementation of the law when it was enacted in 1977. In 1977, the Kansas legislature was faced with remedying a predecessor statute that the Kansas supreme court had struck down as unconstitutional. To remedy the uncertainties of the earlier law, the legislature added new provisions to make clear that the tax on labor services was intended to apply whenever services are done to tangible personal property “whether or not such personal property remains personal property or becomes a part of real estate,” or whether the property is “fastened to, connected with or built into real property.” The legislative history for 1977 Senate Bill 47 explains: “These revisions remove the basis for the earlier interpretation of legislative intent as being not to tax maintenance, servicing or repairing real estate, since under them [the new law] the tax on labor services would apply not only to work on fixtures but to work on any items of personal property that has become part of the real estate.” As you will note, soil excavation work is exempt under this construction since soil being excavated has never been tangible personal property. Concrete has been, and cutting services performed on such concrete structures is “altering” or “servicing” property that has become part of the real estate.

Accordingly, the services of cutting or coring concrete structures, such as sidewalks and walls, are subject to Kansas sales tax. These taxable services are exempted by the same sales tax exemptions that are in place for other taxable labor services. For example, the cutting and coring services would be exempt when they are done as part of original construction, or as part of the remodel, repair, or restoration work done to a residence. See Notice 98-02.

This is a private letter ruling pursuant to K.A.R. 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This ruling will be revoked by operation of law without further department action if there is a change in the controlling statutes, administrative regulations, revenue rulings or case law that materially effects this determination. Please call me if you have any additional questions. My number is (785) 296-3081.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 04/11/2000 Date Modified: 10/11/2001**