**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-2001-052** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Flag pole installation and services at a residence.** |
| **Keywords:** |  |
| **Approval Date:** | **06/12/2001** |

**Body:**

Office of Policy & Research

June 12, 2001

TTTTTTTTTT
TTTTTTTTTT
TTTTTTTTTT
TTTTTTTTTT

Dear Ms. TTTTTT:

We wish to acknowledge receipt of your letter dated June 11, 2001, regarding the application of Kansas Retailers’ Sales tax.

K.S.A. 2000 Supp. 79-3603(p) (1998 Senate Bill No. 493) exempts certain construction services that were formerly subject to Kansas sales tax. Effective July 1, 1998, services performed to install or apply tangible personal property are exempt from sales tax when the services involve the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence.

K.S.A. 79-3603(p) imposes a sales tax upon: “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, remodeling, restoration, renovation or reconstruction, restoration, replacement or repair of a bridge or highway. . .”

The department has determined that it will construe and administer K.S.A. 79-3603(p)(4) as exempting the land improvements that immediately surround a residence. This means the exemption for residential repair and remodeling services generally will be coextensive with the exemption for the original construction of the residence.

The test for whether something is a “land improvement” shall be whether tangible personal property has been erected upon or affixed to the land. To qualify as residential, the land improvement must be immediately near and must principally serve the residence. This means that repairs to a yard fence are exempt but that repairs to a fence designed to corral pleasure horses are not. Barns and machine sheds for farm equipment shall not be considered to be land improvement that principally serve the residence.

Land improvements shall include, but not be limited to, sidewalks, driveways, patios, fences, sodding, tree planting, utility pipes and wires, septic tanks, swimming pools, and tool sheds. Repair services to structures such as steps, stairs, access ramps, porches, and decks shall be exempt whether they are considered to be part of the residence because they are attached to it, or a land improvement because they are immediately nearby.

Please be advised that services performed at a residence, which include, but are not limited to, flag pole installation would not be subject to sales tax in the state of Kansas. However, if the flag pole installation services, are performed in a commercial building, the gross receipts received from the respective service would be subject to the appropriate Kansas sales tax(es), unless the installation services are rendered in connection with the original construction of a building.

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 in the future by the operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or published revenue ruling, that materially effects this private letter ruling.

If I may be of further assistance, please contact me at your earliest convenience at (785) 296-7776.

Sincerely yours,

Thomas P. Browne, Jr.
Tax Specialist

TPB

**Date Composed: 06/25/2001 Date Modified: 10/11/2001**