**Private Letter Ruling**

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| **Ruling Number:** | **P-2001-079** |

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| **Tax Type:** | **Kansas Compensating Tax; Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Recognition of limited liability companies as legal entities in Kansas.** |
| **Keywords:** |  |
| **Approval Date:** | **07/26/2001** |

**Body:**

Office of Policy & Research

July 26, 2001

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXX:

The purpose of this letter is to respond to your letter dated July 3, 2001. In it, you ask if Kansas recognizes a limited liability company as a legal entity for purposes of Kansas sales and compensating taxes.

Per K.S.A. 79-3602. Definitions.

(a) "Persons" means any individual, firm, copartnership, joint adventure, association, corporation, estate or trust, receiver or trustee, or any group or combination acting as a unit, and the plural as well as the singular number; and shall specifically mean any city or other political subdivision of the state of Kansas engaging in a business or providing a service specifically taxable under the provisions of this act.

In your letter you stated:

Tom Hatten has referred us to you for a variety of sales tax issues. We have been getting mixed signals from some of our vendors and we want to know the information correctly.

XXXX is an LLC as a Kansas corporation. We are very much like an ad agency in that we produce catalogs for customers. However, we contract vendors for photography, film production, and printing. We will sometimes contract for mailing services. We have the various vendors bill us for services and in turn we bill our customers and the catalogs are then shipped to the customers of ours.

Questions as follow-

We have been told we do not charge sales tax on our services. We pass along the costs from our vendors including any sales tax to our customers. Is this correct? XXXX makes our money on charging a creative fee, called an agency fee on the final invoice.

Do our vendors who supply us these services charge us the sales tax and we pass it along to our customer, or do they not charge sales tax and XXXX in turn charges the tax to the customer? If the later, what do we sign up for in the way of forms, ID#, etc.

If XXXX charges the tax to our customer and they are out of state are they tax exempt? If so, do we need any type of form on file? If our client is in KS or MO is the tax automatic?

If our vendors are to charge XXXX the tax, and our client is out of state, are they tax exempt? The bill is sent to Components and we in turn bill the customer. If so, what form if any do we provide our vendor for this exemption? If our customer is in KS or MO is the tax automatic?

If a catalog is printed but shipped to a mailing facility for mailing throughout the country, what is taxable? If part is mailed and part is shipped out of KS or MO, what is taxable? We would do this 2 different ways-. print in KS and mail out of MO or print in MO and mail in MO. A catalog is printed and mailed in MO by the same facility, what is the tax liability? Mailing would be all parts of the country and the overages will be shipped out of state.

Are modeling agency fees subject to sales tax?

Finally, a customer of XXXX provides us a tax exempt certification. Can we in turn give this to our vendors and that will be sufficient even with the billing to XXXX and the shipping to our customer?

Our primary vendors are located in Kansas City, KS, Lawrence, KS, and Kansas City, MO. We will use others from time to time, but the huge portion of services come from companies in these cities.

I appreciate your time and consideration of our questions. We have been getting hit with various answers and we felt that it was better to get your answers. You can contact us at the above address and phone numbers.

Kansas sales tax law imposes tax on the sale of tangible personal property and enumerated services.

Kansas exempts "except as otherwise provided in this act, all sales of services rendered by an advertising agency or licensed broadcast station or any member, agent or employee thereof..." K.S.A. 79-3606(nn).

Based on the facts contained in your letter, it is the opinion of the Kansas Department of Revenue that it is appropriate for your business services to be taxed as those of an advertising agency. Therefore, the services that you provide to your customers are not taxable. Your company would be obligated to pay sales tax or use tax on all purchases, including purchases from printers, photographers, etc. Your company must also pay sales taxes on purchases of taxable services.

When your company or an agent of your company takes delivery in Kansas of printed materials, your company is required to pay to the retailer printer, Kansas sales or compensating taxes, if the retailer is located outside the state and does not charge your company Kansas compensating tax, your company is required to self assess the tax. If your company or agent of your company takes delivery of printed materials in another state, then any sales or use tax obligation would be determined under that states law.

To recap, your company's purchases from Kansas retailers are subject to Kansas sales tax, if the item is delivered to you or your agent. It is immaterial that item may be mailed to another state. If your company purchases from an out of state retailer, and the item is delivered into Kansas, your company is required to pay to retailer, Kansas compensating (use) tax. If the retailer is not registered, you are required to self assess compensating tax.

The location of your client is not material to the imposition of sales tax.

If an exempt entity provides you with a tax exemption certificate, no exemption from tax would inure to your company. Once again your company is providing a nontaxable service and is the consumer of all property and services.

Modeling services are not subject to sales tax in Kansas. However, if a photographer bills your company for various services in connection with the production of film, negatives or images, the photographer is not allowed to reduce the taxable base of his service with amounts paid for models.

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.

Please call me at (785) 296-5330, if you need additional assistance.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 07/30/2001 Date Modified: 10/10/2001**