**Private Letter Ruling**

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| **Ruling Number:** | **P-2010-003** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales tax treatment of untethered hot air balloon rides.** |
| **Keywords:** |  |
| **Approval Date:** | **06/30/2010** |

**Body:**

Office of Policy & Research

June 30, 2010

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Re: Sales Tax Treatment of Untethered Hot Air Balloon Rides

Dear Mr.XXXX:

You provided this office with an advisory opinion letter dated January 29, 2010 authored by Ronald Jackson, General Counsel for the United States Department of Transportation, in which he provides general guidance that the Anti-head Tax Act (AHTA), 29 U.S.C. Section 40116, would preempt a local government from imposing a gross receipts tax on hot air balloon rides, where the hot air balloon is piloted and untethered and “travels” by air for some distance downwind from the launching point, the hot air balloon operator thereby carrying passengers in air commerce. You have requested a private letter ruling as to whether Kansas sales tax on hot air balloon rides would be preempted by the AHTA.

Kansas imposes sales tax on “the gross receipts from the sale of admissions to any place providing amusement, entertainment or recreation services . . .” K.S.A. 2009 Supp. 79-3603(e). The AHTA prohibits a state or political subdivision from levying or collect a “tax, fee, head charge or other charge on –an individual traveling in air commerce; . . . or the gross receipts derived from that air commerce or transportation.” 49 U.S.C. Section 40116(b)(1), (4).

Based on the guidance mentioned above from the U.S. Department of Transportation, it is determined that the Anti-head Tax Act (AHTA), 29 U.S.C. Section 40116, would preempt the State of Kansas from imposing its sales tax on hot air balloon rides, where the hot air balloon is piloted and untethered and “travels” by air for some distance downwind from the launching point, the hot air balloon operator thereby carrying passengers in air commerce. A tethered hot air balloon ride would be considered an amusement, such tax would not be preempted by the AHTA, and the charges for a tethered hot air balloon ride would be subject to Kansas sales tax, pursuant to K.S.A. 2009 Supp. 79-3603(e).

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.

Sincerely,

Richard L. Cram

**Date Composed: 06/30/2010 Date Modified: 06/30/2010**