**Opinion Letter**

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| **Letter Number:** | **O-2000-011** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Purchases by a Kansas elevator contractor for use in out-of-state construction projects.** |
| **Keywords:** |  |
| **Approval Date:** | **06/26/2000** |

**Body:**

Office of Policy & Research

June 26, 2000

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RE: Your letter of May 11, 2000

Dear XXXX:

I have been asked to answer your letter that we received last month. In it, you ask how items should be taxed when they are purchased by a Kansas elevator contractor for use in out-of-state construction projects.

Generally, the answer to this question depends on how and where the items are purchased. If the items are purchased from an out-of-state vendor for a specific job that is outside Kansas and shipped to the contractor’s business location in Kansas, the contractor may claim exemption under the temporary storage provisions of K.S.A. 79-3702(e). To take advantage of this exemption, the contractor must: (1) purchase the items from an out-of-state vendor; (2) earmark the items for use outside Kansas; and (3) actually use the items out-of-state. This requires maintaining the items in an area segregated from the contractor’s normal inventory, if he or she maintains one, and being able to document that the items were purchased specifically for the out-of-state construction project. This exemption does not apply to purchases from Kansas vendors. If the Kansas contractor wants to be subject to tax in the other state where the construction is being performed and to buy materials from a Kansas vendor, the contractor would have to have the vendor deliver the items to the project site in the state where the construction is being performed.

If the contractor withdraws items from his or her Kansas inventory, the withdrawal is considered to be a taxable event that occurs in Kansas. This is because items in inventory have come to rest in Kansas and because the withdrawal for use occurs entirely within this state. The fact that contractor intends to remove the item from Kansas for use in another state does not exempt the transaction anymore than any other purchaser’s act of buying something from a Kansas retailer with the intention of taking it from Kansas for consumption in another state.

Please note that the place of delivery is normally the place of sale. This means that if your client is working in another state, the contractor can have the Kansas vendor deliver the items to the work site in that state. In such a case, delivery and sale would occur outside Kansas and the transfer would be subject to the state of delivery’s use tax. If your client sends a truck back into Kansas from an out-of-state construction site to pick up a purchase arranged over the telephone or to buy something, the delivery and sale would take place here and would be subject to this Kansas sales tax.

I hope that this adequately answers your questions. If not, please call me at (785) 296-3081.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 07/24/2000 Date Modified: 10/10/2001**