**Opinion Letter**

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| **Letter Number:** | **O-2005-003** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Transfer of assets that are in Kansas from one corporation or LLC to another corporation or LLC.** |
| **Keywords:** |  |
| **Approval Date:** | **08/31/2005** |

**Body:**

Office of Policy & Research

August 31, 2005

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RE: Your e-mail received on August 10, 2005

Dear XXXX:

Thank you for your recent e-mail. You ask how one of the exceptions in K.S.A. 79-3603)(o) applies. Under this section, Kansas sales tax is imposed on:

(o) the gross receipts received from the isolated or occasional sale of motor vehicles or trailers but not including: (1) The transfer of motor vehicles or trailers by a person to a corporation or limited liability company solely in exchange for stock securities or membership interest in such corporation or limited liability company; or (2) the transfer of motor vehicles or trailers by one corporation or limited liability company to another when all of the assets of such corporation or limited liability company are transferred to such other corporation or limited liability company; or (3) the sale of motor vehicles or trailers which are subject to taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and amendments thereto, by an immediate family member to another immediate family member. For the purposes of clause (3), immediate family member means lineal ascendants or descendants, and their spouses. The base for computing the tax shall be the stated selling price of the motor vehicle or trailer or the value pursuant to subsections (a), (b)(1) and (b)(2) of K.S.A. 79-5105, and amendments thereto, whichever amount is higher. The actual selling price shall be the base for computing the tax on the isolated or occasional sale of wrecked or damaged vehicles. In determining the base for computing the tax on such isolated or occasional sale, the fair market value of any motor vehicle or trailer traded in by the purchaser to the seller may be deducted from the selling price;

You ask if subsection (2) applies to a transaction where all of assets of a corporation or LLC *that are in Kansas*are transferred to another corporation or LLC. The answer is no. This exception applies only if *all* of the assets, including those in Kansas and in other states, are transferred.

Under Kansas law, sales tax exemption statutes are strictly construed in favor of imposing tax and against exemption. *In re Atchison, Topeka & Santa Fe Ry Co.*, 17 Kan. App. 2d 794 (1993). It is a fundamental rule of statutory construction that sales tax exemption statutes will not be extended by implication and should not be read to include things that are not readily found within their plain terms. *Director of Taxation v. Kansas Krude Oil Reclaiming Co.*, 236 Kan. 450, 454 (1984). There is nothing in this exception that indicates that it applies when only Kansas assets are transferred.

K.S.A. 79-3606 catalogues over fifty Kansas sales tax exemptions. These exemptions reflect that the Kansas legislature has not hesitated to limit exemptions to Kansas entities and not to those of other states. For example, K.S.A. 79-3606(b) and K.S.A. 79-3606(d) apply to only those political subdivisions that are in Kansas, K.S.A. 79-3606(s) is limited to groundwater districts organized under Kansas law; K.S.A. 79-3606(z) is limited to port authorities organized under Kansas law; K.S.A. 79-3606(ll) is limited to mental health organization organized under Kansas law; K.S.A. 79-3606(kk) is limited to manufacturing facilities "in this state"; K.S.A. 79-3606(tt) is generally limited to Kansas chapters of the listed national organization; and K.S.A. 79-3606(fff) is limited to warehouses and distribution facilities "in this state."

Had the legislature intended the exception in K.S.A. 79-3603(o)(2) to apply to transfers that involved the sale of all of the Kansas assets of a corporation, it would have enacted limiting language as it did in the various subsections in K.S.A. 79-3606. As noted, tax exemptions and exceptions should not be read to include things that are not readily found within their plain terms. This includes reading "all of the assets of such corporation" to mean "all of the *Kansas* assets of such corporation" in K.S.A. 79-3603(o)(2).

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 09/01/2005 Date Modified: 09/01/2005**