**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-159** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Demolition work including asbestos removal.** |
| **Keywords:** |  |
| **Approval Date:** | **07/20/1999** |

**Body:**

Office of Policy and Research  
  
  
July 20, 1999

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Dear Sir:  
  
  
We wish to acknowledge receipt of your letter dated July 7, 1999, regarding the application of Kansas Retailers’ Sales tax.  
  
The question you present deals with the issue of “original construction.” The controlling statute, K.S.A. 79-3603(p) provides for the imposition of sales tax on:  
  
(p) 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 or repair of a bridge or highway.  
For the purposes of this subsection:  
(1) “Original construction” shall mean the first or initial construction of a new building or facility. The term “original construction” shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;  
(2) “building” shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;  
(3) “facility” shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or of any municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility; and  
(4) “residence” shall mean only those enclosures within which individuals customarily live;

The statute is interpreted, in part, by K.A.R. 92-19-66b. Subsection (i) of the regulation provides:  
  
(i) Services performed to dismantle, demolish, raze or destroy a building or facility or a portion of a building or facility shall be subject to sales tax. If the services are performed in connection with the original construction of a building or facility, and the building or facility is constructed on the same site, the service of dismantling, demolishing, razing or destroying the original building or facility shall not be subject to sales tax.

Based on the statute and regulation, the project you describe would be not considered original construction and so the labor services would be subject to Kansas sales tax. Your purchases of materials and supplies to perform the contract are subject to sales tax.  
  
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: 08/03/1999 Date Modified: 10/11/2001**