**Opinion Letter**

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| **Letter Number:** | **O-2004-005** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales tax relating to community action agencies.** |
| **Keywords:** |  |
| **Approval Date:** | **06/02/2004** |

**Body:**

Office of Policy & Research

June 2, 2004

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RE: Your letter dated February 19, 2004

Dear XXXX :

Thank you for your recent letter. You are the executive director of a Kansas community action agency. You ask if this agency is entitled to claim exemption from sales tax on its purchases. The answer is that sales to community action agencies are taxable unless a specific exemption applies. Specific exemptions that may apply to such an agency include: K.S.A. 2003 Supp. 79-3606(oo), which exempts purchases of materials that the agency uses to repair or weatherize housing occupied by low income individuals; K.S.A. 2003 Supp. 79-3606(v), which exempts sales of food product to contractors for use in preparing meals for delivery to home-bound elderly persons over 60 years of age; and K.S.A. 2003 Supp. 79-3606(ll), which exempts sales to a non-profit entity to a non-profit entity of public heath educational materials for free distribution to the public.

Community action agencies are a creation of the Economic Opportunity Act of 1964, Public Law 88-452, 78 State. 508 (1964), 42 U.S.C. 2790 et seq.) as amended by in 1967, 1970 by the Green Amendment, and 1975 by Public Law 93-644. Section 210(a) of the Act provides that a community action agency shall be "a State or political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or a public or private nonprofit agency or organization which has been designated by a State or such a political subdivision. *See Iowa Attorney General Opinion 05-1980.*

Section 201 states the purpose of the Act, which include (1) the strengthening of community capabilities for planning and coordinating Federal, State and other assistance related to the elimination of poverty; (2) the better organization of a range of services related to the needs of the poor; (3) the greater use of new types of services; (4) the development and implementation of all programs and projects designed to serve the poor or low-income areas; and, (5) the broadening of the resource base of programs directed to the elimination of poverty. Under §212(b) a community action agency shall have at least the following functions: planning for and evaluating the program as to the problems and causes of poverty; encouraging agencies active in the community action agency's program to plan for, secure and administer assistance; undertaking actions to improve efforts to attack poverty; initiating and sponsoring projects responsive to the needs of the poor; establishing procedures by which the poor and other residents will be able to influence the character of programs; and, joining with and encouraging business, labor and the like to undertake, with public officials and other agencies, activities in support of a community action program. Finally, §221(a) provides for financial assistance to community action agencies for the planning, conduct, administration and evaluation of community action programs and components. The components may involve activities designed to assist participants to secure and retain employment, to attain adequate education, to make better use of income, to provide and maintain adequate housing, to provide family planning, to obtain services for the prevention of drug and alcohol abuse, to obtain emergency assistance; to help solve personal and family problems, to achieve greater participation in community affairs, and the like. *See Iowa Attorney General Opinion 05-1980.*

The Kansas retailers' sales tax act defines the term "political subdivision" for purposes of the act:

(aa) "Political subdivision" means any municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state or which certifies a levy to a municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state. Such term also shall include any public building commission, housing, airport, port, metropolitan transit or similar authority established pursuant to law. *K.S.A. 79-3602(aa).*

Sales to political subdivisions are exempt from paying sales tax except when the political subdivision furnishes gas, water, electricity or heat to others. *K.S.A. 2003 Supp. 79-3606(b).* K.S.A. 2003 Supp. 79-3602(aa), quoted above, limits sales tax exemption for political subdivisions to those political subdivisions that: 1) are authorized to levy taxes upon tangible property within the state, 2) can certify a levy to a municipality, agency or political subdivision; or 3) are a public building commission, housing, airport, port, metropolitan transit or similar authority established pursuant to law. Generally, political subdivisions that can levy taxes on tangible personal property or that can certify a levy include cities and counties, *see K.S.A. 12-187 et seq*.; certain hospital districts, *K.S.A. 80-2516*; boards of education, *K.S.A. 72-8159*; the board of regents of a municipal university, *K.S.A. 13-13a23*; community colleges, *see K.S.A. 71-406 et seq.*; school districts, *K.S.A. 79-1801 et seq*.; and boards of country commissions, *K.S.A. 19-404*, among others. The phrase "public building commission, housing, airport, port, metropolitan transit or similar authority established pursuant to law" means established pursuant to Kansas statutes. *See K.S.A. 12-1757, et seq.; K.S.A. 17-2336, et seq.; K.S.A. 3-162, et seq.; K.S.A. 27-315, et seq.; K.S.A. 27-327, et seq.; K.S.A. 12-3401 et seq.; K.S.A. 12-2801, et seq.* The language "similar authority established pursuant to law" does not encompass community action agencies since these agencies are established by Federal law rather than by Kansas statutes. To date, no community action agency established that meets the requirements of the definition set forth in K.S.A. 2003 Supp. 79-3602(aa) so that it qualifies for exemption under K.S.A. 2003 Supp. 79-3606(b) on all of its purchases.

Accordingly, the Kansas retailers' sales tax act does not exempt all community action agencies as a class or entity even though these agencies are funded in whole or in part by federal and state funds. As noted above, there are several specific exemptions that may apply to exempt certain, limited purchases made by community action agencies. These include K.S.A. 2003 Supp. 79-3606(oo), K.S.A. 2003 Supp. 79-3606(v), and K.S.A. 2003 Supp. 79-3606(ll), which are discussed in the first paragraph.

In you letter, you do not provide enough information to determine whether your community action agency qualifies for one of the limited exemptions. To be entitled to a binding ruling, you must provide information that explains the specific program, its objective, and how it is operated. This information should be available in the form of pamphlets, brochures, notices, contracts and other materials that describe the program in question. This material may be directed to the beneficiaries of the program or to volunteers who do the work. It may also be in the form of directives from the Federal government. Once we receive this information, the department will issue a determination on whether or not an exemption exists to reduce the cost of a specific program.

Please call me if you have any questions.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 06/08/2004 Date Modified: 06/08/2004**