**Opinion Letter**

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| **Letter Number:** | **O-2006-004** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Mine reclamation work including the pumping of concrete and fly ash.** |
| **Keywords:** |  |
| **Approval Date:** | **03/29/2006** |

**Body:**

Office of Policy & Research

March 29, 2006

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RE: Your e-mail received November 21, 2005

Dear XXXX:

I have been asked to answer your e-mail. You work for company that specializes in concrete pumping. You are contemplating diversifying your company's operations by starting to do mine reclamation work. This work would involve, among other things, pumping concrete and fly ash into mine voids. You ask how Kansas sales tax applies to such reclamation work. Before discussing how reclamation work is taxed, I will discuss concrete pumping and how it is taxed under the Kansas retailers' sale tax act.

The department recently issued new guidelines for contractors and contractor-retailers. *See EDU-16, Guidelines for Contractors and Contractor-Retailers, EDU-26.*At the end of EDU-26 is a summary that contains the following instructions for ready-mix concrete dealers:

(10) **Ready-mix concrete.**The sale of ready-mix concrete is a taxable retail sale of tangible personal property. The tax base for the sale includes the delivered price, including any minimum load and transportation charges, as well as any standby charges that are charged after arrival at the destination. Pouring concrete is considered to be part of the delivery rather than an installation service. Accordingly, charges for delivering and pouring ready-mix are fully taxable whenever the sale of the concrete is taxable. The original and residential construction exemptions do not exempt charges for ready-mix concrete, its delivery, or its pouring.

These instructions show that when a ready-mix company pours concrete that it is selling and delivering, the act of pouring the concrete is considered to be part of delivery and not a separate installation service. This means that any separately stated pouring charges are included in the tax base for taxable retail sales of concrete and are taxed as part of that sale. It also means that a charge for pouring concrete is not considered to be a charge for installing tangible personal property. Installation services are taxed at K.S.A. 2005 Supp. 79-3603(p).

Pumping concrete is an efficient means of placing concrete at a job site. Sometimes, concrete chutes, like the ones used on cement mixers, will not allow concrete to be placed where it is needed, such as at the back of a home or on the second floor of a building. Other times, the ease and speed of pumping concrete makes it the most economic way to place concrete. Another advantage is that pumping allows concrete to be placed at a more controlled rate than can be achieved with pouring chutes.

Boom truck manufacturers offer different types of remote control and outrigger options, as well as different boom configurations. As a general rule, a concrete boom truck is placed at one spot at a job site, where it remains. The boom truck is positioned so that: (1) the boom can be maneuvered around the job site to place the concrete where it is needed; and (2) ready mix trucks can access the pump and discharge their load directly into the pump's hopper.

The pumping machine is operated by an employee of the pumping company. Typically, the operator stands close to the forms that accept the concrete and watches the concrete flow into the forms. The employee operates a remote control box to control the flow of the concrete. Employees of the general contractor are not allowed to operate or use the pumping equipment. The pipe or hose that discharges the concrete are typically moved around by an employee of the general contractor.

As a general rule, a business that engages in concrete pumping does not sell the concrete being used. Rather, the general contractor buys the concrete from a ready-mix company. The ready-mix company delivers the concrete to the job site, and pours it into the pumping machine's hopper.

The pumping company bills the general contractor for the time that the machinery is used and for the travel time to and from the job site. The general contractor is also billed for the equipment operator, overtime, and any additional laborers, based upon a unit price for the number of cubic yards of concrete that are pumped.

In addition to buying the concrete and arranging for its delivery, the general contractor is responsible for: (1) providing labor to help set up and tear down any pumping lines; (2) vibrating the concrete, if needed; (3) providing the concrete finishing work, such as screening, leveling, bullfloating, and troweling; (4) providing access to water for cleaning the pumping equipment after the job has been completed; and (5) providing a dumping area for excess concrete.

The department has determined that separately stated charges for pumping concrete are not subject to Kansas sales tax. The service provided by concrete pumping companies is similar to the non-taxable services that are provided by crane operator, cartage companies, and excavators. Crane operators and cartage companies only owe tax on their services if they are actively involved in installing the equipment that they lift and set into position. Installation typically call for the equipment to be bolted down, wired, and hooked up to discharge vents or pipe, if needed. This is virtually never done by the crane operator or cartage company. Similarly, excavation services are considered to be a non-taxable service. Charges for excavation are only taxable if the excavation charges are lumped together with charges for installing tangible personal property, such as pipe, in the trench that has been excavated. The service of pumping concrete is also very similar to the service of pouring concrete, which EDU-26 instructs is to be treated as part of the delivery charge rather than as a separate installation service.

While you are considering doing mine reclamation work, you do not explain what his work entails. You also do not indicate if your would be hired to do the work by a governmental entity or by a mining company. Most --- but not all --- government agencies could give you an exemption certificate for any taxable services that are involved in mine reclamation work.

Your e-mail suggests that you would be responsible for part or all of the completed reclamation project. If this is the case, you would be acting as a contractor when you do mine reclamation work. Your sales tax responsibilities would be the same as other similarly-situated contractors. Currently, there are no sales tax exemptions for mine reclamation work. Accordingly, if you are responsible for part or all of the finished project, you would be acting as a contractor or subcontractor and your services would be taxable. *See generally, K.S.A. 2005 Supp. 79-3603(p);. In re Appeal of Angle, 11 Kan. App. 2d 62, 713 P.2d 962 (1986).*As with crane services and excavation services, your entire billing would be taxable --- including any pumping charges --- if you charge your customer for your services and do not state the pumping charges separately. If this is the case, it might be advantageous for you to incorporate a new company to do reclamation work that is separate and distinct from your current concrete pumping company.

As I have indicated, you need to submit additional information about what you are contracting to do when someone hires you to reclaim a mine. This would include information about: (1) who will hire you; (e.g. the Federal government, a private business, a local unit of government, etc.) (2) who pays for the concrete and fly-ash (e.g. you or someone else); (3) who is responsible for meeting the contract requirements; (4) what type of mine is involved; (5) what the actual job objectives are (e.g. closing of the entrance to a mine, filling a mine shaft so that it supports a load, spraying concrete on mine walls, etc.); (6) will there be other contractors involved in the project, etc. Once you provide this information, the department can better explain how Kansas sales tax applies to the mine reclamation operations that you intend to perform.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 03/30/2006 Date Modified: 03/31/2006**