**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-195** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Excavation/backhoe services.** |
| **Keywords:** |  |
| **Approval Date:** | **09/09/1999** |

**Body:**

Office of Policy & Research

September 9, 1999

XXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXX

Dear XXXXXXXXXXXXX:

I have been asked to respond to your letter dated August 3, 1999. In it, you ask for guidance pertaining to Kansas retailers’ sales tax on excavation services .

I have summarized the pertinent facts of your letter:

We own one backhoe and it is operated by the owner. We perform the digging necessary to install water lines, sewer lines and storm cellars. We also, dig ditches and smooth dirt around house and yards. We do not install any tangible property.

The Kansas retailers’ sales tax law imposes tax on “the gross receipts received for the service of installing or applying tangible personal property. . .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 . . .” K.S.A. 79-3603(p).

“Original construction” means “the first or initial construction of a new building. . .and includes 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 [emphasis added], shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;” K.S.A 79-3603(p)(1).

Because of the exception for residences, backhoe services performed at a residence are not subject to tax. Please note that Notice 98-02 identifies what qualifies as a residence and provides an apportionment method when a residence has mixed residential and commercial use. This exemption extends to apartments, nursing homes, dormitories and other similar place where people reside.

Backhoe services performed at a site other than a residence are subject to tax unless they are separately billed or separately stated as a line item on a bill. This means that charges for backhoe work may be exempted by separately billing them or by billing them as a separate line item on a bill that involves excavation work and installation or repair services. A billing for backhoe services for excavation only, that does not involve any installation services, is considered to be separately billed and exempt. This is because of the case of *In re Bernies’ Excavating Services, Inc*., 13 Kan. App.2d 476, 772 P.2d 822 (1989). In that case the court ruled that the gross receipts from excavation services performed are not subject to Kansas retailers’ sales tax imposed under K.S.A. 79-3603(p).

Stated simply, there are several situations that exempt or excepted the imposition of sales tax on excavation services:

Excavation services performed in connection with the original construction of a building or facility.

Excavation services performed in connection with remodeling of a residence.

Excavation services performed at any site, if these services are separately billed or separately stated as a line item on a bill.

This private letter ruling is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to make an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this private letter ruling.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC: mdc

Enclosure: Notice 98-02

**Date Composed: 09/13/1999 Date Modified: 10/11/2001**