**Private Letter Ruling**

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| **Ruling Number:** | **P-2003-010** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Church operated thrift shop.** |
| **Keywords:** |  |
| **Approval Date:** | **02/18/2003** |

**Body:**

Office of Policy & Research

February 18, 2003

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XXXX
XXXX

RE: Your letter dated January 17, 2003

Dear XXXX:

I have been asked to answer your letter addressed to Attorney General Phil Kline. Your letter raises questions about sales tax law, which is administered by the Kansas Department of Revenue. The Kansas Attorney General's office often asks the department to answer constituent letters about tax laws, which fall within Revenue's particular area of administrative expertise.

In your letter, you state that the XXXX Church operates a thrift shop called the "XXXX Shop." The shop collects sales tax on everything that it sells. All of the proceeds from the sales are distributed to local charities, such as the XXXX Rescue Mission, the Spiritual Life Center at the XXXX penitentiary, and XXX's prison ministry. You ask if the XXXX Shop can stop charging and remitting sales tax because all of the proceeds are donated to charities. The answer is that it cannot. The XXXX Shop must continue to collect and remit the applicable state and local sale tax on its retail sales.

The controlling rule is found in K.A.R. 92-19-67(a):

Each not-for-profit corporation, business, organization or association regularly engaged in the business of selling tangible personal property at retail or furnishing services or entertainment to the ultimate user or consumer, and not for resale, shall be a retailer as defined in K.S.A. 1986 Supp. 79-3602(d). Each retailer shall collect and remit sales tax on the total gross receipts received from all taxable retail sales of tangible personal property, services or entertainment.

The Kansas sales tax act generally requires sellers to collect sales tax on their retail sales, regardless of who the seller is. This is shown in the definition of "person" found in K.S.A. 79-3602(a):

"Persons" means any individual, firm, copartnership, joint adventure, association, corporation, estate or trust, receiver or trustee, or any group or combination acting as a unit, and the plural as well as the singular number; and shall specifically mean any city or other political subdivision of the state of Kansas engaging in a business or providing a service specifically taxable under the provisions of this act.

This provision makes it clear that Kansas cities and counties must collect sales tax when they make taxable sales. These sales include sales made at snack bars, vending machine sales, utility sales, and employee sales. These transactions are specifically taxable because the Kansas legislature did not want to favor municipally-owned utilities over other utilities owned by stockholders. Favoring publicly-owned utilities over privately-owned utilities could have been perceived as socialistic in the 1930's and 1940's.

While this basic theory that sales tax must be collected on all retail sales has been compromised by a number of recent special interest exemptions, it continues to apply to religious organizations. Accordingly, the XXXX Shop is required to continue to charge, collect, and remit sales tax on its retail sales.

I hope that I have answered all of your questions. If you need to discuss this matter, please call me at 785-296-3081. 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,

Thomas E. Hatten
Attorney/Policy & Research

cc: Shiela Meneses, Attorney General's Office

**Date Composed: 03/05/2003 Date Modified: 03/05/2003**