**Private Letter Ruling**

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| **Ruling Number:** | **P-2005-015** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Pharmaceutical manufacturing; United State Department of Agriculture (USDA) Good Manufacturing Practices Regulations (GMPR) mandated purchases.** |
| **Keywords:** |  |
| **Approval Date:** | **06/03/2005** |

**Body:**

Office of Policy & Research

June 3, 2005

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RE: Your e-mail received May 24, 2005

Dear XXXX:

Thank you for your recent e-mail. Your company manufactures pharmaceuticals for use in humans and animals. The United States Department of Agriculture ("USDA") has regulations in place that pharmaceutical manufacturers must follow. The USDA Good Manufacturing Practices Regulations ("GMPR") mandate things such as special coating for floors, special paint for walls, sheet rock, interior doors, and special flooring. You ask if purchases of any of these things are exempted by the integrated production exemption or by any other exemption. The answer is no. Your company's purchases of these items are taxable.

Tax laws, for the most part, are self contained and must be construed in the context of the law's own provisions. Here, the integrated plant exemption states what is exempt and what isn't. This can be seen in K.S.A. 2004 Supp. 79-3606(kk)(1)(A), which exempts:

all sales of machinery and equipment which are used in this state as an integral or essential part of an integrated production operation by a manufacturing or processing plant or facility;

The exemption is for "machinery" and "equipment." None of the things you refer to can be considered to be machinery or equipment.

K.S.A. 2004 Supp. 79-3606(kk)(5) specifies that exempt machinery and equipment *does not include*:

(F) buildings, other than exempt machinery and equipment that is permanently affixed to or becomes a physical part of the building, and any other part of real estate that is not otherwise exempt;
(G) building fixtures that are not integral to the manufacturing operation, such as utility systems for heating, ventilation, air conditioning, communications, plumbing or electrical;
(H) machinery and equipment used for general plant heating, cooling and lighting;

Special coating for floors, special paint for walls, sheet rock, interior doors, and special flooring are not machinery and equipment. These are things that become a permanent part of a building, which K.S.A. 2004 Supp. 79-3606(kk)(5)(F) through K.S.A. 2004 Supp. 79-3606(kk)(5)(H) provide are not exempt under the integrated plant exemption.

The test for K.S.A. 2004 Supp. 79-3606(kk) is not whether federal or state laws mandate that a particular item must be purchased and used in order for a manufacturing operation to be lawful or whether a manufacturing operations will be shut down if an item is not in use. The test for this exemption is whether some provision in K.S.A. 2004 Supp. 79-3606(kk) extends to the item in question. Here, it is clear that K.S.A. 2004 Supp. 79-3606(kk) does not exempt your company's purchase of special coating for floors, special paint for walls, sheet rock, interior doors, and special flooring.

There are no other exemption in the Kansas sales tax act that applies to these purchases. Similarly, labor services to apply or install these things at an manufacturing plant are taxable unless they are applied or installed as part of the original construction of the building in question.

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. Please let me know if you have additional questions.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 06/08/2005 Date Modified: 06/08/2005**