**Private Letter Ruling**

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| **Ruling Number:** | **P-2006-012** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Equipment used in document-management services.** |
| **Keywords:** |  |
| **Approval Date:** | **06/19/2006** |

**Body:**

Office of Policy & Research

June 19, 2005

XXXX
XXXX
XXXX

RE: Your e-mail received June 13, 2006

Dear XXXX:

Thank you for your recent e-mail. You ask if purchases of certain equipment for use by your company, XXX, qualifies for sales tax exemption. XXX will use the equipment as part of the document-management services that it provides to other businesses. The equipment will convert paper documents to images on microfilm or to data on compact discs. Please be advised that XXX must pay sales or use tax when you buy this equipment.

XXX's website describes the kinds of different business activities that it engages in. These include sales and servicing of document scanners, microfilm equipment, imaging equipment, image filing systems, and cameras, among other things. Charges by XXX to customers for the sale, lease, and servicing of this equipment are taxable, as are XXX's charges for the film and chemicals that the customers buy for use in the equipment. These are retail sales because they are sales for use or consumption by the customer that is making the purchase. *See K.S.A. 2005 Supp. 79-3602(ii) and K.S.A. 2005 Supp. 79-3602(jj).*

In addition to retailing this equipment, XXX has employees who evaluate what a client needs to do to manage its documents. XXX then designs a comprehensive document-management system for the client. The XXX evaluation process include reviewing the volume of documents that the client handles, the types of documents, and the flow of the documents through the client's business. XXX also reviews the client's access, retrieval, and storage needs. Based on this review, XXX recommends different storage and retrieval options, including which storage medium best suits the client's needs. XXX also provides the client with cost comparisons for the different storage and retrieval options

In addition to these services XXX provides microfilming services for a wide range of business and engineering records. XXX's website explains:

We offer scanning and data entry services to complement your internal capabilities, or on an outsourcing basis to remove the burden from your busy employees. Whether it is a box or records or millions of pages per month, we have the ability to meet the most demanding requirements. We use only industry leading scanners that allow us to apply image enhancement processes; de-skewing, de-speckling and quality control that will give you the absolute best image quality available!

With these things in mind, I will discuss how the Kansas sales and use tax acts apply to the XXX and to the equipment that XXX is purchasing.

The Kansas retailers' sales tax act imposes sales tax on retail sales of tangible personal property and enumerated services. Retail sales are sales to the final user or consumer. *K.S.A. 2005 Supp. 79-3602(ii)* *and (jj).* Tangible personal property is defined as "personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam and prewritten computer software." *K.S.A. 2005 Supp. 79-3602(pp)*. Enumerated services, which are taxable, are the services that are listed in the act. They include installation, repair, and maintenance services, among others. Nontaxable services include legal services, accounting services, recordkeeping services, data entry services, and fax services, among others.

Part of your business involves taking a client's paper documents and producing a copy of the document in a different format, such as microfilm or CDs. The department has ruled that services similar to yours are considered to be fabricators. As such, these businesses are required to collect sales tax on the selling price of the items they produce. *See EDU-27, Sales Tax Guidelines for Fabricators.*These businesses include photographers, copy and duplicating services, and business that transfer home movies from film to compact discs. Treating these businesses as fabricators results in these businesses collecting tax on the full selling price of the items that they produce. Sourcing of the sales tax is based on where the fabricated item is delivered to the customer. For these transactions, the customer typically presents the business with certain items that the customer wants reproduced or captured on a different format. In other words, the customer is seeking a particular copy or copies of something that it owns. Businesses that provide these services are required to pay sale tax on the equipment they buy to copy or reproduce the customer's property in a different format. *See EDU-27, Sales Tax Guidelines for Fabricators.*

XXX produces the same things that would be taxable if a customer brought in a stack of invoices and asked XXX to copy them. However, in XXX's case, it appears that many customers contract with XXX to manage their recordkeeping needs on an ongoing basis. A document-management service is not a enumerated services under the Kansas sales tax act. Because XXX is providing a non-taxable service, XXX should not charged sales tax to its clients. Instead, XXX is required to pay sales tax on the items it buys and uses to provide the nontaxable document maintenance services. This includes paying sales tax on the equipment that XXX buys, as well as on the chemicals and film that XXX buys to use in providing the services.

In those few instances when XXX provide scanning or microfilming services on a piecemeal basis outside of an ongoing document-management service contract, XXX should collect tax on the total amount charged to the customer, just like copy and duplicating services do. When XXX buys microfilm to use and provide to your customers in these endeavors, it should not pay sales tax or accrue use tax. If it did pay sales tax on these purchases, XXX should take a credit for sales tax paid on the film.

All of XXX's business activities involve either providing nontaxable retail services or selling items at retail. Because of this, XXX cannot claim the integrated manufacturing or processing exemption when it buys document scanners, microfilm equipment, imaging equipment, image filing systems, and cameras. This is the same treatment that is accorded to photographers and to copy and duplicating services.

As has been discussed, XXX is a retail business. XXX does not operate what is "commonly regarded by the general public as an industrial production operation to manufacture, process, fabricate, finish, or assemble items for wholesale or retail distribution as part of what is commonly regarded by the general public as an industrial manufacturing or operation." *K.S.A. 2005 Supp. 79-3606(kk)(2)(D).*XXX is not a company that mass produces items for ultimate sale to the public.

Rather, XXX sells and services document scanners, microfilm equipment, imaging equipment, image filing systems, and cameras. It provides document-management services to end users. It also copies documents onto microfilm, which is considered to be sold at retail to the customer. XXX's business activities do not allow XXX to claim a sales and use tax exemption on its purchases of scanner, and other equipment ..The manufacturing exemption that XXX asks about is intended to benefit manufacturing or processing business that mass produce products. As K.S.A. 2005 Supp. 79-3606(kk) instructs, "manufacturing or processing businesses do not include, by way of illustration by not of limitation, nonindustrial businesses that whose operation is primarily retail and that produce or process tangible personal property as an incidental part of conducting the retail business." *K.S.A. 79-3606(kk)(2)(D)(i).* XXX does not qualify for this exemption because it is a non-industrial business that produces property as an incidental part of the retail service and retail sales it makes to consumers.

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.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 06/20/2006 Date Modified: 06/20/2006**