**Opinion Letter**

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| **Letter Number:** | **O-1999-17** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales tax exemption for projects involving the U.S. government.** |
| **Keywords:** |  |
| **Approval Date:** | **10/20/1999** |

**Body:**

Office of Policy & Research

October 20, 1999

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Dear Ms. TTTTT:

We wish to acknowledge receipt of your letter dated October 15, 1999, regarding the application of Kansas Retailers’ Sales tax.

K.S.A. 79-3606(d) states in part; “When any political subdivision of the state, public or private nonprofit hospital, public or private elementary or secondary school or public or private nonprofit educational institution shall contract for the erection, repair, or enlargement of any building or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate.”

K.S.A. 79-3606(e) is written in the same manner except that it applies to projects for the government of the United States.

As can be seen from the statutes, the instructions for the project exemption certificate are listed in the following order:
1) The exempt entity shall secure the certificate from the state.
2) The exempt entity shall furnish the certificate to the contractor.
3) The contractor shall furnish the certificate number to his supplier.
4) The suppliers shall execute invoices bearing the certificate number.

Thus, a contractor cannot furnish the certificate number to his suppliers and claim the sale as exempt until after the exempt entity has requested and been furnished from the state the project exemption certificate. Therefore, a contractor making purchases for a project prior to the issuance of a project exemption certificate by the Kansas Department of Revenue does not have any authority to claim the tax exemption and must pay the sales tax to the supplier.

Suppliers who make sales to a contractor prior to issuance of a project exemption certificate must collect the tax from the contractor and remit the same to the Kansas Department of Revenue.

The effective date of the project exemption certificate is the date the application for such certificate is received by the Kansas Department of Revenue. Only sales made on or after this date can be honored as tax exempt by the Kansas Department of Revenue.

Please be advised that a regulation was adopted, that would, permit an exempt entity that fails to secure a project exemption certificate in time for a contractor to secure exemption for part or all of its purchases may apply to the department for permission to seek from its contractor’s suppliers a refund of taxes on sales that would have been exempt had a project exemption certificate been secured in time for its contractors to claim exemption on their purchases. Additionally, the current law permits a tax exempt entity to obtain agency status with the Kansas Department of Revenue and issue its own project exemption certificates on a timely basis, on forms issued by this department.

If I may be of further assistance, please contact me at your earliest convenience at (785) 296-7776.

Sincerely yours,

Thomas P. Browne, Jr.
Tax Specialist

TPB

**Date Composed: 11/03/1999 Date Modified: 10/10/2001**