**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-146** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales of tangible personal property and services for the purpose of raising funds for a nonprofit organization.** |
| **Keywords:** |  |
| **Approval Date:** | **06/29/1999** |

**Body:**

Office of Policy and Research

June 29, 1999

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Dear XXXXXXXXXXXXXX:

I have been asked to respond to your letter dated March 29, 1999. In it, you ask for guidance in the application sales tax on sales tangible personal property and services for the purpose of raising funds for your nonprofit organization, and you also ask if your organization qualifies as a religious organization for purposes of Kansas sales tax.

In your letter you stated:

Currently, we are set to pay sales tax on a quarterly basis because of three fund raising events that occur each year. These events are as follows:

1) We sell XXXXXX created by our homeless shelter for the benefit of our homeless shelter to raise funds each year.

2) We have a benefit dinner each year, the proceeds of which go to our XXXXXXXX which we operate.

3) We have another benefit which is done each year to raise funds for our XXX XXXXXXXX which we operate.

The prior comptroller set up a sales tax number and began remitting sales tax on the gross proceeds of these events. Are we really required to do this? What is the rule about if the event is held more than 365 days apart, we are not required to remit sales tax?

The second question involves the fact that we are a 501(c)(3) nonprofit corporation. Given the ruling change on July 1st, are we required to pay sales tax on purchases? We have had this evaluated by our attorney who determined that we do have to pay sales tax as the ruling discusses “place of worship” which we are not and therefore, he felt we didn't qualify for the new ruling. However, several nonprofit who were not specifically churches are now not paying sales tax as a result of this ruling. Which is correct? And, must we continue to remit sales tax given this new ruling on our fundraising events?

I will answer your second question first. Kansas sales tax law exempts “all sales of tangible personal property and services purchased by a religious organization which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code, and used exclusively for religious purposes. . .” K.S.A. 79-3606(aaa).

For purposes of the Kansas retailers’ sales tax act, the term “religious organization” means any organization, church, body of communicants, or other group that gathers in common membership for mutual support and edification, in piety, worship, and religious observance, at an established place of worship which the organization maintains for the purpose of conducting regularly scheduled religious services or meetings, and of which no part of the net earnings of such organization inures to the benefit of any private shareholder or individual member. *Notice 98-05; See K.S.A. 79-4701(e); K.S.A. 8-1730a.* An organization that is composed of religious organizations may derive exemption from its members if all of its members are themselves exempt religious organizations and the derivative organization is organized and operated exclusively to assist its member organizations in carrying out their religious purpose. Such an organization must itself be exempt from tax under I.R.C. §501(c)(3). *Notice 98-05; See Trustees of The United Methodist Church v. Cogswell, 205 Kan. 847 (1970).*

Charitable organizations that are composed of churches, businesses, and lay persons are separately incorporated organizations that are not composed exclusively of churches or other religious organizations, but include lay people and businesses. Therefore, these groups do not qualify as a religious organization for purposes of the exemption extended at K.S.A. 1998 Supp.79-3606(aaa).

It is the opinion of the Kansas Department of Revenue that your organization does not meet the necessary criteria to be a religious organization exempt pursuant to K.S.A. 79-3606(aaa).

Your other question is application of the exemption for isolated or occasional sales of tangible personal property or enumerated taxable services.

Kansas sales tax law exempts “all isolated or occasional sales of tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 79-3603. . .” K.S.A. 79-3606(l).

Kansas law broadly imposes tax on the sale of tangible personal property and enumerated services. The law also contains exemptions and exceptions from the imposition of sales tax. One of the exemptions is for “isolated or occasional” sales. When analyzing a transaction for the purpose of whether or not sales tax applies, one must analysis the appropriate attributes of the transaction and person making the sale. Persons that are not retailers as defined by the sales tax act are not required to register, collect and remit sales to Kansas. Persons that on occasion sell tangible property or provide a taxable service for a fee are not retailers for purposes of the sales tax act. The term “isolated or occasional” means “the nonrecurring sale of tangible personal property, or services taxable hereunder by a person not engaged at the time of such sale in the business of selling such property or services. Any religious organization which makes a nonrecurring sale of tangible personal property acquired for the purpose of resale shall be deemed to be not engaged at the time of such sale in the business of selling such property. . . “ K.S.A. 79-3602(j). Religious organizations are allowed to engage in one retail fundraising event per year and are not required to collect sales tax if the sale meets the requirements of K.S.A. 79-3602(j).

As noted a religious organization may engage in an annual fundraising event and is not required to collect and remit sales tax on that sale. This is by definition an isolated or occasional sale. Once again your organization is not a religious organization, therefore this exemption does not apply. The descriptions of your sales per your letter are of a recurring nature. This sales are not by definition isolated or occasional sales. It is the opinion of the Kansas Department of Revenue that the law does not contain an exemption or exception for your organization fund raising sales. Your organization must collect and remit sales tax on all taxable sales including the gross receipts from fund raising.

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 affects this private letter ruling.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 07/08/1999 Date Modified: 10/11/2001**