**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-228** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Service of arranging for items to be sold on e-bay; an on-line auction service.** |
| **Keywords:** |  |
| **Approval Date:** | **10/15/1999** |

**Body:**

Office of Policy & Research

October 15, 1999

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XXXX

RE: Your letter of September 20, 1999

Dear XXXX:

I have been asked to answer your letter that we received last month. You ask what sales tax duties attach to your business of arranging for items to be sold on e-bay, an on-line auction service.

The typical transaction works as follows: (1) a client contacts you about something they want to sell on e-bay; (2) you photograph the item, provide a description, set a reserve price, and send the information to e-bay for auction on the internet; (3) after a certain amount of time passes and the reserve is exceeded, e-bay notifies you and provides you with the name and address of the buyer; (4) the buyer then sends you a check for the item; and (5) you package the item and ship it to the buyer once the check clears. You charge the customer a fee for placing the item on e-bay for auction. You pay e-bay a fee for the services they provide. You ask if either fee is subject to Kansas sales or use tax.

Kansas does have laws that control public auctions. Based on these laws and your description of your services, it appears that you are acting to accommodate clients who wish to have their items sold over e-bay, rather than as a “auctioneer.” K.S.A. 58-1015(a) defines “auctioneer” as “a person who conducts a public auction, as herein defined.” K.S.A. 58-1015(e) defines “public auction” as “the offering for sale or selling of new goods, ware or merchandise to the highest bidder or offering for sale o selling of new goods, ware or merchandise at a high price and then offering the same at successive lower prices until a buyer is secured.” Rather than making auction sales yourself, you provide services that a client needs to place an item on e-bay for sale. While not an auctioneer, you do act as a retailer when you deliver items to the buyer and accept payment on behalf of your client.

Based on your description, neither the fee you pay to e-bay nor the fee that your customer pays to you are subject to Kansas sales tax. This means that you are considered to be providing a non-taxable service. You must pay sales tax on everything you buy and use to provide such a service. The only other taxable event is the sale of the auctioned item *if*the item is shipped to a buyer at a Kansas address. When such delivery is made, Kansas sales tax should be remitted on the selling price. I suggest that you provide for the contingency of the sale being made in Kansas in your contract with clients. Items that you ship to buyers by mail or common carrier at addresses outside Kansas are exempt from Kansas tax because of the interstate commerce clause.

I hope that this accurately characterizes your business and answers all of your questions. If not, please call me and we can discuss this matter further. I again apologize for the difficulties you experienced with our telephone system . The department has reviewed of telephone system and is taking steps to remedy the problem that you experienced.

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 by operation of law without further department action if there is a change in the controlling statutes, administrative regulations, revenue rulings or case law that materially effects this determination.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 11/01/1999 Date Modified: 10/11/2001**