**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-65** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Qualification for exemption from Kansas Retailers' Sales Tax of labor services to complete a building.** |
| **Keywords:** |  |
| **Approval Date:** | **03/12/1999** |

**Body:**

Office of Policy & Research

March 12,1999

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XXXXXXXXXXX
XXXXXXXXXXXX

Dear XXXXXXXXXXX:

I have been asked to respond to your letter of March 1, 1999. In it, you ask if the labor services to complete a building qualifies for an exemption from Kansas retailers’ sales tax.

FACTS

The work involves the construction of XXXXXXXX in the XXXXXXXXXXXX, located in XXXXXXXX, Kansas. This project has been partially completed. The original contractor defaulted on its contract in XXXXXXXX several months XXXXXXXXX, destroying most of the XXXXX. The original contractor had contracted with the XXXXXXXXXXX using funds provided by XXXXX for that purpose, and began working on the project in January of 1996. The original contractor had completed between 50 and 75 percent of the rough carpentry and electrical work at the site in XXXXXXXX. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

After several discussions, the XXXXXXXXXXX has allowed XXXXXX to bid the project out through the XXXXXXXX. You are currently in the process of hiring another contractor to complete the work. The new contractor will use the original plans and specifications to finish the rough carpentry and electrical work, to construct the XXXXXXXXX, and to reconstruct work that has been damaged or destroyed. They will have 365 days to complete the work.

XXXXXXXXXXXX is a facility shared by XXXXXXXXXXXXXXX, and the City of XXXXX, and all three are original tenants of this facility. The part of the facility currently in use was constructed in XXXXXXXXXXXXX. The XXXXXX of the building has never been opened to the public and will remain closed until the XXXXX are complete. The time between original contractors default on its contract in XXXX, and the current award of the contract to the new contractor is due to negotiations regarding the XXXX authority to award the contract and subsequent negotiations with the new contractor.

LAW

Kansas law imposes retailers’ sales tax on “the gross receipts received for the service of installing or applying tangible personal property. . .except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building. . .” K.S.A. 79-3603(p).

The term “original construction” means “the first or initial construction of a new building or facility.” K.S.A. 79-3603(p)(1).

Kansas Administrative Regulation 92-19-66b subsection (f) deems labor services performed to be exempt labor services if all of the qualifying conditions are met. Subsection (f) states,

“(f) Services of installing or applying tangible personal property to complete unfinished portions of newly constructed buildings, facilities, shopping centers, and malls when space within the building, facility, center, or mall is leased or sold to the first or initial tenant of that space shall not be subject to sales tax. Services performed to install or apply tangible personal property for the completion of an unfinished portion of an existing building or facility shall be presumed not to be taxable when all of the following conditions are met.
(1) The service being rendered was called for in the original blueprint, building plan, or building specification at the time original construction of the building or facility was started, including any change orders issued during the original construction of the building or facility.
(2) The completion of the unfinished portion of the building or facility is within a time that is reasonably close to the time of the original construction of the building or facility.
(3) The service rendered would have been performed at the time of the original construction of the building or facility, except for circumstances beyond the owner's control. Those circumstances shall not include instances in which the project is essentially completed and usable for the purposes intended, but the owner merely fell short of funds, or when the owner, after taking possession or occupancy of the building or facility, contracts for additional services.
(4) The owner or occupant is the first or initial owner or occupant of the building or facility.”

Based on the facts as contained in your request, it is the opinion of the Kansas Department of Revenue that the services to complete this project are deemed to be in connection with the original construction of a building. These labor services are exempt from Kansas retailers’ sales tax. This exemption applies to labor services performed by the general contractor and all subcontractors to complete this project.

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,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 03/26/1999 Date Modified: 10/11/2001**