**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-2002-043** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales of propane for: 1) heating or lighting a residence; 2) commercial use; and 3) powering forklifts.** |
| **Keywords:** |  |
| **Approval Date:** | **05/16/2002** |

**Body:**

Office of Policy & Research

May 16, 2002

XXXX
XXXX
XXXX

RE: Your letter dated April 24, 2002
and my earlier response

Dear XXXX:

I wrote you earlier concerning propane sales. My letter dated May 2, 2002 misstated the law regarding the local tax situs of propane sales. That letter should be discarded. This letter states the correct law regarding the tax situs for local sales tax on propane sales.

Your company sells propane. You ask if Kansas state and local sales tax applies to sales of propane for: (1) heating or lighting a residence; (2) commercial use; and (3) powering forklifts. I will answer your questions in order.

*(1) Propane sold to heat or light a residential premises.* Under the Kansas sales tax act, sales of utilities delivered though pipelines or distribution lines to residences are subject to local sales tax but exempt from state sales tax. Local sales tax is due based on the location of the residence. The law also exempts sales of propane gas, LP-gas, coal, wood and other fuels used for heating or lighting a residence. This tax scheme provides local bedroom communities with a tax base to help pay for their police, fire department, and other local services. It provides tax relief to homeowners by exempting these services from the higher state sales tax imposition. The state sales tax exemptions are at K.S.A. 2001 Supp. 79-3606(w) and K.S.A. 2001 Supp. 79-3606(y).

K.S.A. 12-191 provides that the situs for sales of gas, which include a propane gas, LP-gas, and nature gas, whether delivered by pipeline or truck, is the location of the user or recipient. Accordingly, your business must collect local sales tax for its propane sales to residences based on the location of the user.

During our telephone discussion, you indicated that most of your propane sales to residences involve filling 500 or 1,000 gallon tanks that they own or rent from you. Accordingly, on these transactions you should charge the homeowner local sales tax based on the location of their residence. Propane sales of this volume are to heat or light the residence. The department has ruled that sales of small 20 pound tanks, which are commonly used on barbecues and in recreational vehicles, do not qualify for this exemption.

One clearly stated qualification is that the propane sold to a resident is not exempt if it is used for commercial purposes. Thus, if a homeowner operates a business in their home that uses propane, they must pay sales tax the portion of the purchase that is used for commercial purpose.

(2) *Propane sold for commercial use*. Kansas state and local sales tax is imposed on sales of propane for commercial use. While generally taxable, the legislature has enacted exemptions that exempt many commercial sales from tax. For example, propane consumed in production is exempt from sales tax. This means that if a manufacturer buys propane and uses it exclusively in the company's production operations, the company may claim exemption on the purchase. Similarly, restaurants that buy propane to cook with may claim exemption. While propane consumed in production is exempt, both the manufacturer and the restaurant must pay sales tax on propane used to heat their buildings. I have enclosed a copy of a ST-28B(Rev. 2/00), that details how these exemptions apply. While this certificate is written in terms of delivery though a single meter, the same concepts apply to bulk sales of propane. As with sales to residential property owners, local sales tax should be collected based on the location of the user.

*(3) Propane sold to power fork lifts.* As noted, the sale of propane is exempt if the propane will be consumed in production of property that is resold at retail. This raises the question of what constitutes "production." One answer is found in the legislative enactment of the integrated production exemption --- K.S.A. 2001 Supp. 79-3606(kk):

For purposes of this subsection, machinery and equipment shall be deemed to be used as an integral or essential part of an integrated production operation when used:
(A) To receive, transport, convey, handle, treat or store raw materials in preparation of its placement on the production line;
(B) to transport, convey, handle or store the property undergoing manufacturing or processing at any point from the beginning of the production line through any warehousing or distribution operation of the final product that occurs at the plant or facility. . . .

The quoted provisions show that equipment used as part of an integrated production operation includes forklifts used to transport raw materials and property undergoing manufacturing from receipt of the raw materials through warehousing of the final product at the plant of facility. Therefore, propane sold to power a forklift used in the way is exempt as consumed in production.

Kansas also has a separate exemption for warehousing, K.S.A. 79-3607(fff). While sales of warehousing equipment are exempt, Kansas law does not have an exemption for "consumed in warehousing." On a practical basis, this means that you may honor an ST-201 (Rev.9/00), "Integrated production machinery and equipment exemption certificate," but not an ST-203 (Rev.9/00), "Warehouse machinery and equipment exemption certificate." I have enclosed a copy of these certificate for your review.

I believe that I have answered all of your questions. If you have more, please call me at 785-296-3081 and we will discuss them. This private letter ruling is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to make an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this private letter ruling.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

Enclosures

**Date Composed: 05/29/2002 Date Modified: 05/29/2002**