**Opinion Letter**

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| **Letter Number:** | **O-2010-007** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Installation or application services performed to repair damages to motor vehicles.** |
| **Keywords:** |  |
| **Approval Date:** | **06/24/2010** |

**Body:**

Office of Policy & Research

June 24, 2010

XXXXX
XXXXX
XXXXX

RE: Your e-mail received June 22, 2010

Dear XXXXX:

Thank you for your recent e-mail. You suggest that the exceptions in K.S.A. 2009 Supp. 79-3603(p) for installation or application services performed to repair damages caused by "fire, flood, tornado, lightning, explosion, windstorm, ice loading and attendant winds, terrorism or earthquake" apply to motor vehicles. Please be advised that these exceptions do not apply to motor vehicles. Charges to repair a motor vehicle are taxable in Kansas regardless of how the vehicle was damaged. Such charges are not exempt under K.S.A. 2009 Supp. 79-3603(p) or under any other Kansas sales tax provision.

K.S.A. 2009 Supp. 79-3603(p) and K.S.A. 2009 Supp. 79-3603(q) impose sales tax on charges for labor services performed to repair or install replacement parts on a motor vehicle. These two statutes contain nothing that exempts any labor service charges for work done on an insured's motor vehicle. Charges by a Kansas body or repair shop to an insurance company for parts and labor are fully taxable. Your company is also responsible for paying sales or use tax on any replacement equipment that it pays for and has drop shipped to an insured who then selects an installer.

K.S.A. 2009 Supp. 79-3603(p) imposes sales tax on:

(p) the gross receipts received for the service of installing or applying tangible personal property which when installed or applied is not being held for sale in the regular course of business, and whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate, **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 or facility,* *the original construction,* reconstruction, restoration, remodeling, renovation, *repair* or replacement *of a residence or the* construction, reconstruction, restoration, replacement or repair of a *bridge or highway***.
For the purposes of this subsection:
(1) "Original construction" shall mean the first or initial construction of a new building or facility. The term "original construction" shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building, facility or utility structure damaged or destroyed by fire, flood, tornado, lightning, explosion, windstorm, ice loading and attendant winds, terrorism or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;
(2) "building" shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;
(3) "facility" shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility;
(4) "residence" shall mean only those enclosures within which individuals customarily live;
(5) "utility structure" shall mean transmission and distribution lines owned by an independent transmission company or cooperative, the Kansas electric transmission authority or natural gas or electric public utility; and
(6) "windstorm" shall mean straight line winds of at least 80 miles per hour as determined by a recognized meteorological reporting agency or organization . . . .*(Emphasis added).*

K.S.A. 2009 Supp. 79-3603(q) and K.S.A. 2009 Supp. 79-3603(p) impose tax on:

(q) **the gross receipts received for the service of repairing, servicing, altering or maintaining tangible personal property** which when such services are rendered is not being held for sale in the regular course of business, and whether or not any tangible personal property is transferred in connection therewith. The tax imposed by this subsection shall be applicable to the services of repairing, servicing, altering or maintaining an item of tangible personal property which has been and is fastened to, connected with or built into real property;
(r) the gross receipts from fees or charges made under service or maintenance agreement contracts for services, charges for the providing of which are taxable under the provisions of subsection (p) or (q); *(Emphasis added).*

Motor vehicles are tangible personal property. Customer charges for the services of repairing, servicing, altering or maintaining a motor vehicle are taxed under K.S.A. 2009 Supp. 79-3603(q). Charges for installing repair and replacement part or for painting a vehicle are taxed under K.S.A. 2009 Supp. 79-3603(p).

K.S.A. 2009 Supp. 79-3603(p) taxes charges for installation and application services:

***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 or facility,* *the original construction,* reconstruction, restoration, remodeling, renovation, *repair* or replacement *of a residence or the* construction, reconstruction, restoration, replacement or *repair of a bridge or highway*. *(Emphasis added).*

This exception does not apply to motor vehicles. A motor vehicle is not a building or a "facility" as defined at K.S.A. 2009 Supp. 79-3603(p)(3), cannot be considered a "residence" within which individuals customarily live, and is not a bridge or highway. There is nothing in K.S.A. 2009 Supp. 79-3603(p) that exempts the service of repairing a motor vehicle or the service of installing repair or replacement parts on it.

Similarly, there are no exceptions in K.S.A. 2009 Supp. 79-3603(q) to its imposition on the services of "repairing, servicing, altering or maintaining tangible personal property." All of the exceptions for repair services are contained in K.S.A. 2009 Supp. 79-3603(p) and those exceptions are limited to services performed to buildings, residences, bridges, highways, and "facilities."

There are no other exemptions or exceptions in the Kansas retailers' sales tax act that can be construed as exempting charges for motor vehicle repairs. This means that charges to repair a motor vehicle are fully taxable regardless of how a vehicle was damaged. The charges are taxable when a motor vehicle is damaged in a tornado, flood, or earthquake, is hit by lightning, or is damaged by any other "act of god" listed in K.S.A. 79-3603(p). Charges to repair a motor vehicle are taxable if it is damaged by an act of terrorism, in an accident, by vandalism, by smoke, or by any other means.

Please be advised that an insurance company may not claim a sales tax exemption when it contracts with a body or repair shop or pays the shop for parts or services. If such an exemption is claimed, the company will be subject to penalties and fines prescribed in K.S.A. 79-3615.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 06/24/2010 Date Modified: 06/24/2010**