**Private Letter Ruling**

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| **Ruling Number:** | **P-2001-033** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Ingredients or component parts.** |
| **Keywords:** |  |
| **Approval Date:** | **04/10/2001** |

**Body:**

Office of Policy & Research

April 10, 2001

TTTTTTTTTTTTTTTT

Dear Mr. TTTTTT:

We wish to acknowledge receipt of your letter dated April 10, 2001, regarding the application of Kansas Retailers’ Sales tax.

**K.S.A. 79-3606(m)**exempts from sales tax, "all sales of tangible personal property which become an ingredient or component part of tangible personal property of services produced, manufactured or compounded for ultimate sale at retail within or without the state of Kansas; and any such producer, manufacturer or compounder may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for use as an ingredient or component part of the property or services produced, manufactured or compounded".

Ingredient or component parts are items that become a part of a larger whole or finished product which will be sold to the final consumer. To be considered an ingredient or component part, the item must be:

? necessary and essential to the finished product
? be used in or on the finished product
? become a physical part of the finished product, and
? become an ingredient or compound part of property or service for retail sale.

For example, fabric, thread, buttons and zippers are component parts of an item of clothing (finished product) which will be sold at retail.

Other items considered to be ingredient or component parts are not as obvious. Containers, labels and shipping cases, twine and wrapping paper may be ingredient parts. When these items are used to distribute property for sale, and are not reusable or returned to the producer or manufacturer, they qualify as ingredient parts.

(K.S.A.) 79-3602(l) provides:

(l) “Ingredient or component part” means tangible personal property which is necessary or essential to, and which in actually used in and becomes an integral and material part of tangible personal property or services produced, manufactured or compounded for sale by the producer, manufacturer or compounder in its regular course of business. The following item of tangible personal property are hereby declared to be ingredients or component parts, but the listing of such property shall not be deemed to be exclusive nor shall such listing be construed to be a restriction upon, or an indication of, the type or types of property to be included within the definition of “ingredient or component part” as herein set forth:
(1) Containers, labels and shipping cases used in the distribution of property produced, manufactured or compounded for sale which are not to be returned to the producer, manufacturer or compounder for reuse.
(2) Containers, labels, shipping cases, paper bags, drinking straws, paper plates, paper cups, twine and wrapping paper used in the distribution and sale of property taxable under the provisions of this act by wholesalers and retailers and which is not to be returned to such wholesaler or retailer for reuse.
(3) Seeds and seedlings for the production of plants and plant products produced for resale.
(4) Paper and ink used in the publication of newspapers.
(5) Fertilizer used in the production of plants and plant products produced for resale.
(6) Feed for animals, fowl and aquatic plants and animals, the primary purpose of which is use in agriculture or aquaculture, as defined in K.S.A. 47-1901, and amendments thereto, the production of food for human consumption, the production of animal, dairy, poultry or aquatic plant and animals products, fiber, fur, or the production of offspring for use for any such purpose or purposes.
(Emphasis added.)

The statute is interpreted by Kansas Administrative Regulation (K.A.R. 92-19-54). The regulation provides, in subsections (d), (e) and (f):

(d) Each container, wrapper or other shipping or handling material actually accompanying the product sold is not subject to sales tax.
(e) Each retailer purchasing a container or other shipping or handling material for consumption which is not for resale as described in paragraph (d) is subject to sales tax. Each purchase by a retailer of a container or other shipping or handling material in which title remains with the retailer when the tangible personal property contained therein is sold by the retailer, or where the container or other shipping or handling materials are to be returned to the retailer by the consumer of the tangible personal property, is subject to sales tax.
(f) Each purchase of a container, wrapper or other shipping or handling material by a retailer using the container, wrapper or other handling material to provide nontaxable services is deemed to be consumed by the service provider and is subject to tax.
(Emphasis added)

The issue you present is nearly identical to that considered by the Board of Tax Appeals (BOTA) in *In The Matter Of The Appeal Of Hampel Oil Distributors, Inc.* In that case, a copy of which is enclosed for your review, the BOTA stated, in Paragraph 21, Page 7:

The Board finds that the facts in *Consumer Co-operative* are so similar to the facts in this matter as to be virtually undistinguishable (sic). The Board concludes that the drums do not meet the exemption of K.S.A. 1996 Supp. 79-3602(l)(2) as the drums are returnable containers. The Board concludes that the purchase of the drums by Hampel from the manufacturer of the drums is a taxable event under the retailer’s sales act. The Board affirms the decision on the designee on this issue. (Emphasis added.)

Based on the statute, the regulation, and their interpretation by the BOTA on nearly identical facts, we must conclude it is proper for your client to pay sales tax when your client purchases the cartons.

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 effects this private letter ruling. If I may be of further assistance, please contact me at your earliest convenience at (785) 296-7776.

Sincerely yours,

Thomas P. Browne, Jr.
Tax Specialist

TPB

**Date Composed: 04/12/2001 Date Modified: 10/11/2001**