**Opinion Letter**

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| **Letter Number:** | **O-2005-001** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Copy and duplicating services.** |
| **Keywords:** |  |
| **Approval Date:** | **08/01/2005** |

**Body:**

Office of Policy & Research

August 1, 2005

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XXXX

RE: Your e-mail received on July 26, 2005

Dear XXXX:

I have been asked to respond to your recent e-mail. In it you state that you have a client that operates copy and duplicating service. You ask if sales tax is owed when your client buys copiers to uses to reproduce the copies that its sells at retail and collects sales tax on. The answer is yes. Purchases and leases of copy machines, binding machines, and other machines by a copying service are subject to Kansas sales and use tax. These businesses may not claim exemption under the integrated production exemption set forth at K.S.A. 2004 Supp. 79-3606(kk).

When K.S.A. 2004 Supp. 79-3606(kk) was enacted, the department issued Notice 00-08 to help implement the new sales tax exemption. The notice explains:

The new law benefits manufacturing or processing businesses. The law defines “manufacturing or processing business” as a business that utilizes an integrated production operation to manufacture, process, fabricate, finish, or assemble items for wholesale and retail distribution as part of what is commonly regarded as a industrial manufacturing or processing operation or a agricultural commodity processing operation. The exemption does not apply to retail operations or other non-industrial businesses. Retail operations and non-industrial businesses include, but are not limited to: contractors; construction companies; retail businesses that prepare food products for consumption by the buyer on or off premises; businesses that service or refurbish property that is returned to its owner, such as repair shops and machine shops; copying services, photo finishing services, and similar businesses that perform services for retail customers; telephone companies; and utility transmission and distribution operations.

K.S.A. 79-3606(kk) (2)(D)(iii) specifies that:

Manufacturing or processing businesses do not include, by way of illustration but not of limitation, nonindustrial businesses whose operations are primarily retail and that produce or process tangible personal property as an incidental part of conducting the retail business. . . .

Photocopying, copying, and duplicating services do not qualify for this exemption. As a general rule, service businesses like you describe that produce articles to the special order of customers are treated as retailers under the sales tax law. These businesses include restaurants, bakers, meat lockers, metal shops, ones that imprint t-shirts, and so forth. These business are not industrial processors or manufacturers. They do not conduct what is "commonly regarded by the general public as an industrial production operation to manufacture, process, fabricate, finish, or assemble items for wholesale or retail distribution as part of what is commonly regarded by the general public as an industrial manufacturing or operation." *K.S.A. 79-3606(kk)(2)(D).* Typically, these business accept an order from a final consumer and produce items to fill that order. They often provide their services to walk in customers. These kinds of businesses do not qualify for exemption under a statute that dictates: "manufacturing or processing businesses do not include, by way of illustration by not of limitation, nonindustrial businesses that whose operation is primarily retail and that produce or process tangible personal property as an incidental part of conducting the retail business." *K.S.A. 79-3606(kk)(2)(D)(i)(emphasis supplied).*

I hope that this letter adequately explains why your client is not entitled to claim exemption when it leases copying equipment.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 08/02/2005 Date Modified: 08/02/2005**