**Opinion Letter**

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| **Letter Number:** | **O-2011-014** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Assembly of a manufactured product.** |
| **Keywords:** |  |
| **Approval Date:** | **12/06/2011** |

**Body:**

Office of Policy & Research

December 6, 2011

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RE: Your e-mail received December 5, 2011

Dear XXXX:

Thank you for your recent e-mail. You ask if charges to assembly a manufactured product, such as an office chair, are subject to Kansas sales tax. The answer is yes. A charge to assemble a manufactured product from its components is subject to Kansas sales tax whether the charge is billed by the retailer as part of the selling price of the product or by a third-party service provider as a standalone charge for services.

Manufacturers often package and ship their products as component parts that must be assembled for use. Shipping component parts rather than a fully-assemble product reduces shipping costs and helps prevent damage to the product during transit. These component parts must be assembled by the retailer, buyer, or a third-party service provider for the buyer, before the product can be used for its intended purpose.

If a retailer assembles a product at its store or shop that it later resells, the retailer recoups the cost it incurs assembling the product in the "selling price" it charges for the product. The definition of "sales or selling price" includes the retailer's "labor and service cost[s]" as well as "delivery" and "installation charges" that are billed to the buyer. *K.S.A. 79-3602(ll).*This means if a retailer assembles and sells a product, it cannot deduct its costs of assembling the product from the amount it charges to the buyer.*See e.g. definition of "set-up charges" in EDU-28.*

This analysis applies whether the component parts are assembled by the retailer at its business location or at the location where the buyer takes delivery. When a buyer contracts to buy an assembled product and the product is assembled at the buyer's location, any separately stated assembly charges are taxable. This is because the service charges are part of the "selling price" which is defined to include: (1) the retailer's "labor and service cost[s]"; and (2) "charges by the retailer for any service necessary to complete the sale . . . ." *K.S.A. 79-3602(1)(C).*A retailer's charges for services performed to assemble and set up exercise equipment for use by the buyer are an example of taxable "charges by the retailer for any service necessary to complete the sale . . . ."

Unlike most retail sales, a sale of component parts of a product isn't complete upon delivery to the buyer if the retailer has agreed to assemble the product after delivery. The sale is complete only after the buyer accepts the assembled product. Even "optional" charges for assembling a product are taxable if the sale is conditioned on the product being assembled by the retailer. *See K.S.A. 79-3602(1)(C)("charges by the retailer for any service necessary to complete the sale . . . .").*

Kansas sales tax is imposed on labor service charges billed by a third-party serviceman to a consumer to assemble goods for the consumer. For example, a consumer may buy a product that is unassembled and hire someone other than the retailer to assemble it. In such cases, the sale by the retailer is complete when the component parts are delivered to the consumer.

Charges billed by the third-party serviceman to the consumer to assemble the product from its component parts are taxable under Kansas law even when the consumer did not buy the parts from the serviceman. For purposes here, K.S.A. 21010 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 . . . .a

K.S.A. 2009 Supp. 79-3603(q) taxes:

(q) the gross receipts received for the service of repairing, servicing, altering or maintaining tangible personal property . . . .

When a product like an office chair is "assembled" by a third-party service provider, one component part is installed or affixed to another component part. Usually, a smaller part is "installed" on a larger component or assembly of component parts. In addition, the service provider may "apply" stickers or similar products to the assembly. The department has always considered charges for assembling a manufactured product from its component parts to be taxable charges for the service of installing tangible personal property. *See K.S.A. 79-3603(p).*This is because assembling components into a product for use necessarily requires installing or affixing one component part to another until the final product re is fully assembled.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 12/15/2011 Date Modified: 12/15/2011**