**Private Letter Ruling**

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| **Ruling Number:** | **P-1998-222** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Direct pay permits and out-of-state contractors.** |
| **Keywords:** |  |
| **Approval Date:** | **12/18/1998** |

**Body:**

Office of Policy & Research

December 18, 1998

XXXXXX
XXXXXX
XXXXXX

RE: Your letter dated November 23, 1998

Dear XXXX:

I have been asked to respond to your letter that we received late last month. In it, you request direct pay authority for your company. You describe XXXX as “an out of state contractor” that subcontracts its installation and maintenance contracts to Kansas contractors. You indicate that K.A.R. 92-19-66b makes it difficult for XXXX’s automated billing system to properly account for Kansas sales tax and ask for direct pay authority in hopes that this authority will overcome your accounting difficulties.

I have enclosed a copy of Notice 98-02 for your review. Subsection (f)(2) states: “A holder of a direct pay permit shall not use their direct pay authority to claim exemption: . . . (3) in connection with construction contracts.” Accordingly, XXXX cannot be granted a direct pay permit since it is “an out of state contractor.” Even if XXXX were granted such authority to cover activities such as manufacturing or interstate warehousing, it would not be allowed to use the authority to account for its construction contracts. Therefore, granting XXXX direct pay authority would not solve your problem.

In reviewing your letter, it appears that XXXX may be misconstruing Kansas law and thereby making its collection and reporting duties more difficult than necessary. K.A.R. 92-19-66b explains how contractors should establish the tax base for their labor services charges when they perform taxable services in Kansas. This regulation does not apply when XXXX or any other general contractor does not perform labor services in Kansas.

When the regulation applies because XXXX performs services here, XXXX is required to collect sales tax from its Kansas customers on the difference between the contract amount and the tax paid materials and tax paid subcontractor charges. This sales tax amount should then be remitted to the state. This means that when XXXX engages in a taxable contracts, XXXX should not charge its Kansas customers sales tax on the total amount that XXXX bills to them. As noted, the correct tax base for such contracts is the difference between the total contract amount and the sum of the subcontractor payments and payments for materials, both of which should include payment of tax.

If XXXX does not perform taxable services in Kansas on a contract but subcontracts out all of its labor services, XXXX should not follow K.A.R. 92-19-66b to determine the amount to charge to customers. On such jobs, XXXX must pay sales tax to its Kansas subcontractors. No addition tax would be due on these charges. XXXX would be required to collect sales tax on the equipment and materials that is provides under the contract, unless XXXX paid tax when it purchased the equipment and materials for the project. XXXX collection of tax on these jobs would be similar to the way it collects tax in states that do not charge tax on labor services. The one exception would be that charges that are rebilled for installation by subcontractors would include sales tax that XXXX paid to the subcontractors.

The following table sets forth the appropriate tax base for XXXX’s billings.

WHEN XXXX DOES NOT PERFORM TAXABLE SERVICES IN KANSAS

· If XXXX pays Kansas taxes on its materials and supplies and pays sales tax to its Kansas subcontractors, the appropriate taxes have been paid. Customers should not be charged additional sales tax.
· If XXXX (1) buys materials and supplies tax exempt or manufactures its own materials and supplies and (2) pays sales tax to its Kansas subcontractors, the appropriate tax base is the amount charged to the customer for the materials and supplies. XXXX should charge tax to its customers on this amount and remit it to the state of Kansas.

WHEN XXXX PERFORMS TAXABLE SERVICES IN KANSAS

· If XXXX pays Kansas taxes on its materials and supplies and pays sales tax to its Kansas subcontractors, the appropriate tax base to charge tax on is the difference between the total contract price and the total amount paid for materials and subcontractors, including sales tax.
· If XXXX buys materials and supplies tax exempt or manufactures its own materials and supplies and pays sales tax to its Kansas subcontractors, the appropriate tax base is the difference between the total contract price and the total amount paid for materials and subcontractors, including sales tax.

I hope that his assists you in understanding your Kansas sales tax duties and in simplifying your accounting.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

Enclosure

**Date Composed: 03/03/1999 Date Modified: 10/10/2001**