**Private Letter Ruling**

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| **Ruling Number:** | **P-1998-98** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales tax on catering services.** |
| **Keywords:** |  |
| **Approval Date:** | **08/28/1998** |

**Body:**

Office of Policy & Research

August 28, 1998

XXXXXXXXXXXXXXX
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XXXXXXXXXXXXXXX
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Dear XXXXXXXXXXXX:

The purpose of this letter is to respond to your letter dated August 3, 1998. This is a private letter ruling pursuant to Kansas Administrative Regulation 92-19-59.

I have reviewed facts as contained in your letter and pursuant to K.A.R. 92-19-69, your company would be considered a retailer for purposes of the Kansas retailers' sales tax. It is immaterial that your limited liability company is organized under the jurisdiction of a state other than Kansas. I would also agree with your conclusion that your company should collect tax based on where the delivery of food and services takes place. For instance, if food is prepared at your XXXXXXXX, Kansas location and then delivered to a location in Kansas, this sale would be considered a Kansas sale subject to Kansas retailers' sales tax. If the food were prepared at your XXXXXXXX, Kansas location and delivered to a location in Missouri, this sale would be considered a Missouri sale subject to Missouri sales tax.

Kansas Administrative Regulation 92-19-69 states:

Caterers. (a) Each person engaged in the business of catering is a retailer as defined in K.S.A. 1986 Supp. 79-3602(d). Each retailer shall collect sales tax on the total gross receipts received from the sale of food, meals and drinks, other than alcoholic liquor as defined in K.S.A. 41-102 as amended by L. 1987, Ch. 182, Sec. 1 and amendments, and cereal malt beverages as defined in K.S.A. 41-2701 as amended by L. 1987, Ch. 182, Sec. 97, and amendments, unless specifically exempt. Sales tax shall be imposed on the total selling price of the transaction without any
deduction or exclusion for labor or services expended, skill, time spent, overhead and other expenses incurred by the caterer in producing the tangible personal property or profit thereon, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether separately billed or segregated on the same bill.
(b) Each amount designated as a service charge added to the price of food, meals or drinks, shall be a part of the selling price of the food, meals or drinks, and shall be included in the total selling price subject to sales tax, even though such charges are made in lieu of tips and are paid over by the retailer in whole or in part to the retailer's employees.
(c) The gross receipts received by a person holding a temporary permit as defined in K.S.A. 41-2601 as amended by L. 1987, Ch. 182, Sec. 60, from each sale of alcoholic liquor as defined in K.S.A. 41-102 as amended by L. 1987, Ch. 182, Sec. 1 and amendments, and cereal malt beverages as defined in K.S.A. 41-2701 as amended by L. 1987, Ch. 182, Sec. 97 and amendments, upon which no Kansas excise tax has been paid, shall be subject to sales tax. (Authorized by K.S.A. 79-
3618, implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

This letter is not binding upon the State of Missouri, therefore I am strongly urging you to seek written advice from the Director of Revenue, State of Missouri in regard to this matter. You can do this by requesting a letter ruling pursuant to Missouri Regulation, 12 CSR 10-3.003. The address of the Missouri Department of Revenue is PO Box 311, Jefferson City, MO, 65105-0311

This private letter ruling 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 private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially effects this private letter ruling.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 09/04/1998 Date Modified: 10/11/2001**