**Private Letter Ruling**

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| **Ruling Number:** | **P-2001-082** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Retail sales of self-contained portable spas.** |
| **Keywords:** |  |
| **Approval Date:** | **07/27/2001** |

**Body:**

Office of Policy & Research

July 27, 2001

XXXXXXX

Dear XXXXX:

The purpose of this letter is to respond to your letter dated July 19, 2001. In it, you ask if your sales to out of state customers are subject to Kansas sales tax.

In your letter you stated:

We are a retail company that sells self contained portable spas. The spas are electrically 220 volt hardwired to the residence. No plumbing is necessary. Most customers place the spa on a patio or deck. Some customers build decking around the spa. Some customers build a room around the spa or put them inside their home.

Kansas law imposes retailers’ sales tax on the retail of tangible personal property and enumerated services pursuant to K.S.A. 79-3603. The law imposes tax on the gross receipt of the retailer. The retailer gross receipt includes any charges for shipping and handling. Deliveries from Kansas to another state are not subject to Kansas tax. Deliveries in state are taxable to Kansas. A sale normally takes place at the time and place that property is delivered to the buyer. If a Kansas retailer makes delivery to a Kansas address, the sale occurs in Kansas and is subject to state and local sales tax. This rule applies regardless of how an item is shipped or delivered.

If a Kansas retailer makes delivery to an out-of-state address by the US Postal Service, by common carrier such as UPS, or on the retailer’s truck or on the truck of the retailer’s agent, the sale is regarded as taking place in the state of delivery and is not subject to Kansas tax. When an out-of-state resident picks up something in Kansas, delivery occurs here and the sale is subject to state and local sales tax. These delivery rules make a delivery to a contract carrier taxable when the carrier is acting as the buyer’s agent.

Your letter continues with a series of questions.

Are spas/hot tubs sales tax exempt?

Answer: No.

We have a retail store in Kansas and in Missouri. If a customer from Missouri purchases a spa at our Kansas store does he pay Kansas sales tax?

Answer: Yes, if the customer takes delivery in Kansas you must tax the sale. If delivery occurs outside of Kansas the sale is subject to the other state’s use tax.

If a customer from Nebraska or Iowa (where we do not have stores) purchases a spa from our Kansas store are they sales tax exempt?

Answer: No, if the customer takes delivery in Kansas you must tax the sale. If delivery occurs outside of Kansas the sale is subject to the other state’s use tax.

If we do service repair work to a spa do we charge sales tax on the parts, service call or labor?

Answer: The service is exempt, if performed at a residence. If the service is performed at nonresidential location, then the service is taxable. Parts are always taxable, residential or commercial.

If we move a spa from one home to another home do we charge sales tax?

Answer: The service is exempt, if performed at a residence.

If we ship chemicals to a customer via UPS do we charge sales on shipping charges?

Answer: Yes, when shipping property to an instate destination, any shipping or handling charges are a part of the gross receipt subject to Kansas retailers’ sales tax.

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 make 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 affects this private letter ruling.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 08/01/2001 Date Modified: 10/11/2001**