**Private Letter Ruling**

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| **Ruling Number:** | **P-2002-099** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Service of setting up new wall panels and furniture into work cubicles.** |
| **Keywords:** |  |
| **Approval Date:** | **11/25/2002** |

**Body:**

Office of Policy & Research

November 25, 2002

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RE: Your letter received October 31, 2002

Dear XXXX:

Thank you for your recent letter. You are engaged in a service business that contracts with other businesses that own movable walls and related office equipment. You provide services to set up new wall panels and furniture into work cubicles. You also reconfigure existing wall panels and furniture. Some of your competitors do not charge or collect sales tax on these services, while other do. You ask if these services are taxable.. Please be advised that they are subject to Kansas sales tax. You should collect state and local sales tax based on your business location, since you do not enter into contracts for $10,000 or more.

The Kansas retailers' sales tax act taxes the service of "installing or applying tangible personal property." *K.S.A. 79-3603(p).*The act also taxes the services of "repairing, servicing, altering or maintaining tangible personal property." *K.S.A. 79-3603(o).* The department has always taxed a seller's charges to a buyer for setting-up newly purchased equipment. For example, prior to the law change in 1998, the department always held that setting up home gyms, weight training equipment, home theatres, stereo equipment, and similar equipment for use are services that are taxable under K.S.A. 79-3603(p) and K.S.A. 79-3603(o). While this rule was changed for work done in homes and other residences, the rule continues to apply for commercial businesses. These services are taxable even when the sale of equipment and installation or set-up services are billed as separate line items.

In your case, taking down movable office walls and reinstalling them in different configuration are taxable services. Breaking down the cubicles is "altering" tangible personal property. Reinstalling the walls to reconfigure them into a different office set-up is "installing tangible personal property." While "installation services" often involve installing replacement parts on tangible personal property such as a boat or automobile, this imposition also covers charges for setting up tangible personal property for use. For example, if someone owns an automobile and buys performance parts for it, a service provider who install the parts must charge sales tax on installation charges even though the service provider is selling nothing but the services.

Tearing down or moving any part of the movable wall system is subject to sales tax. This includes tearing down, moving, and installing shelving, desks, lighting, and other part of the panel system that makes up the cubicles. If you are hired to move stand-alone desks, chairs, and file cabinets that are not part of the panel wall system, these services would not be subject to sales tax. To be exempt, such services would have to be contracted for separately and be billed as a separate line item. If you lump these charges together with the charges for knocking-down and re-installing the panels, these services are taxable as an incidental part of your service charge to your customers. For example, moving a file cabinet as part of the reconfiguration of a panel wall system would be taxable unless the contract provided for moving the cabinets and identified a separate price that was being paid.

Please note that your services are subject to Kansas sales tax only when you perform the services in Kansas. If you perform your services in Missouri or on some other state, you should check with the state where you perform the services to determine whether the services are subject to that State's sales tax. The competitors that you mention should be collecting sales tax on services performed in Kansas in the same manner as I have described. If they are not, please provide me with their names and addresses and we will review their practices to see that what they do confirms your belief. If they are not collecting sales tax as required by law, they will be liable for any state and local tax that went uncollected for the past three years plus any applicable penalty and interest. Not collecting tax gives them a business advantage over businesses such as your that correctly apply the law and collect sales tax for the state.

I hope that my letter answers all of your questions clearly and completely. If you need to discuss this matter further, please call me at 785-295-3081. This is private letter ruling. It 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 ruling.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 11/25/2002 Date Modified: 11/25/2002**