STATE OF KANSAS
Bill Graves, Governor

DEPARTMENT OF REVENUE
Stephen S. Richards, Secretary

Office of the Secretary
Kansas Department of Revenue
915 SW Harrison St.
Topeka, KS 66612-1588

(785) 368-8222
FAX (785) 291-3614
www.ksrevenue.org

Office of the Secretary

REVENUE RULING 19-2002-1

August 5, 2002

This revenue ruling sets forth the department's policy regarding the sales and use tax liability of Indians and of retailers who conduct business with Indians.

Definitions

For purposes of this ruling, "Indian reservation" means all lands, notwithstanding the issuance of any patent, within the exterior boundaries of areas set aside by the United States for the exclusive use and occupancy of Indian tribes by treaty, law or executive order and which are currently recognized as "Indian reservation" by the United States Department of the Interior. Four Kansas reservations currently qualify under this definition. They are the reservations of the Kickapoo Tribe of Kansas, Prairie Band Potawatomi Indians, Iowa Tribe of Kansas and Nebraska, and Sac & Fox Nations of Missouri.

"Indian tribe" means any organized Indian nation, tribe, band or community recognized as an Indian tribe by the United States Department of the Interior.

"Indian organization" means an Indian tribe that resides on a Kansas reservation, and entities formed under the authority of that tribe whose members are all Qualified Indians of the tribe. The term excludes all other entities, including corporations and entities that are wholly owned by Indians or formed under the authority of a tribe that does not have a reservation in Kansas.

"Indian" means any person of Indian descent who is entitled to receive services as an Indian from the United States Department of the Interior.

"Qualified Indian" means an Indian who: (a) is duly registered on the tribal rolls of the Kickapoo Tribe of Kansas, Prairie Band Potawatomi Indians, Iowa Tribe of Kansas and Nebraska, or Sac & Fox Nations of Missouri; (b) maintains a permanent residence on the reservation of his or her tribe that is located in whole or in part in Kansas; and (c) purchases only for personal use or consumption and not for resale.

"Sale" means a retail sale of tangible personal property or enumerated services for personal use or consumption except when the usage specifies the sale is a sale for resale.

Sales and Use Taxation

(1) *Overview.* Except as otherwise provided in this ruling, sales and use tax shall apply to the sale or use of tangible personal property within an Indian reservation to the same extent that it applies with respect to the sale or use of property elsewhere within Kansas.

(2) *Sales to Indians and Indian tribes made off the reservation.* Kansas sales tax shall apply to all sales of tangible personal property where delivery is made to Indians or Indian tribes off their reservation. Kansas sales tax shall apply to all services performed for Indians or Indian tribes off their reservation.

(3) *Sales to Indians who reside off the reservation.* Sales to Indians who do not maintain their permanent residence on a reservation in Kansas are subject to sales tax regardless of whether the sale is made on or off the reservation.

(4) *Sales to contractors for use in improving real property on the reservation.* All sales of tangible personal property delivered to contractors off the reservation for use on a reservation for constructing building or making other real property improvements for Indians or Indian tribes are subject to sales tax. Kansas law does not authorize Indian tribes to issue or be issued Kansas project exemption certificates. Kansas contractors and retailers may not honor project exemption certificates or other pass-through exemption certificates issued by or on behalf of an Indian or Indian tribe.

(5) *Sales to on-reservation retailers.* Indian and non-Indian retailers who are located on a reservation must issue their suppliers resale exemption certificates that contain their Kansas registration number. An Indian retailer who is buying for resale in the normal course of business must claim exemption for resale and may not claim exemption as a Qualified Indian. Any supplier who sells or delivers items to a retailer on the reservation that are intended to be resold but fails to secure a resale exemption certificate that contains its Kansas registration number may be subject to fines and imprisonment.

(6) *Sales by on-reservation retailers.* Indian and non-Indian retailers who are located on a reservation are required to register as Kansas retailers, collect sales tax from their customers who are not Qualified Indians who reside on that reservation, and keep records in the same manner as other Kansas retailers. Sales by on-reservation retailers to non-Indians and Indians who do not reside on that Kansas reservation are subject to sales tax in the same manner as sales by retailers located off the reservation.

(7) *Sales to Qualified Indians.* (A) Sales by off-reservation retailers where delivery occurs off the reservation. Sales made to Qualified Indians, Indian tribes, or to other Indians by retailers located off the reservation are subject to Kansas sales tax when delivery is made off the reservation. Ownership of property generally transfers upon the delivery of property to the purchaser. This includes deliveries made by the retailer to a purchaser in a store, across-the-counter, by mail, by common carrier, or in the retailer's vehicle. The place of delivery generally determines the place that a sale occurs even when a sale is negotiated at a location other than the place of delivery. (B) Sales by retailers located on the reservation. As explained in paragraphs (6) and (8), sales tax shall not apply to sales made to Qualified Indians or the Indian tribe by retailers located on that tribe's reservation. Sales tax shall apply to all other sales made by

retailers located on the reservation. (C) Sales by off-reservation retailers where delivery occurs on the reservation. Except for sales of motor vehicles that are discussed in paragraph (12) and have their own rules because of dealer licensing laws, sales tax shall not apply on sales made by off-reservation retailers when the property is delivered to and ownership of the property transfers from the off-reservation retailer to a Qualified Indian purchaser on his or her reservation or to an Indian tribe on its reservation. Sales tax shall apply to all other sales made by off-reservation retailers to others on the reservation.

(8) *Sales to Indian organizations.* Sales tax applies to sales to Indian organizations in the same manner and to the same extent as sales to Qualified Indians.

(9) *Sales of utilities.* Electricity, natural gas, or water sold by a public utility to a Qualified Indian on his or her reservation is not subject to sales tax. Sales of such utilities to non-Indians and to Indians who reside on the reservation but are not members of the tribe are subject to tax.

(10) *Sales of taxable services to Indians.* (A) Services performed on the reservation for Qualified Indians are not subject to sales tax. Services performed on the reservation for non-Indians and Indians who do not reside on their reservation are subject to sales tax. (B) Services performed on an item off the reservation are subject to sales tax regardless of the subsequent delivery of the item to a Qualified Indian on the reservation.

(11) *Improvements to real property.* Sales tax does not apply to the labor services of contractors who perform work for a Qualified Indian on a reservation. Contractors who perform such contracts may not claim a pass-through exemption for the benefit of a Qualified Indian when purchasing materials from suppliers regardless of whether the supplier is located on or off the reservation. Qualified Indians who wish to purchase materials exempt must purchase such materials directly from the supplier and, if the supplier is located off the reservation, arrange for the supplier to deliver the materials to the construction site on the reservation.

(12) *Vehicle sales and leases.* Vehicles sold or leased to Qualified Indians are subject to sales tax when the sales is made in Kansas unless the dealer is located on the reservation. Kansas motor vehicle dealers are prohibited from conducting sales away from their established place of business and, therefore, cannot lawfully deliver vehicles to the reservation. Vehicle use by Qualified Indians is subject to use tax when the sale is made outside Kansas to the extent provided by K.S.A. 79-3704(c) and K.S.A. 79-3705 and the vehicle is used off the reservation. Any vehicle that is licensed in Kansas shall be presumed to be used off the reservation.

(13) *Other leases of personalty.* Except for vehicles, sales tax does not apply to leased tangible personal property when the lease is to a qualified Indian and the leased property is delivered to the Indian reservation for use on the reservation. In the absence of evidence to the contrary, it shall be assumed that the use of property other than a vehicle by a Qualified Indian lessee occurs on the reservation if the lessor delivers the property to the Qualified Indian lessee on the reservation.

Registration and recordkeeping duties.

Registration requirements. Effective October 1, 2002, all retail businesses that are located on Kansas Indian reservations must register with the Kansas Department of Revenue as retailers and collect and remit Kansas sales tax on their retail sales other than to Qualified Indians. Retailers

located on Kansas Indian reservations who have previously registered with the department as retailers need not re-register.

Records of exempt sales to Indians. Kansas retailers are required to keep records of exempt sales, including exempt sales to Qualified Indians. A Qualified Indian claiming exemption must present proof to the retailer that he or she is an enrolled member of a Kansas Indian tribe who resides on that reservation, and complete an exemption certificate that contains his or her name, address, tribe and tribal identification number. The retailer must maintain the certificate as part of its business records. On subsequent exempt retail sales, the retailer may document exemption by recording the Indian's name and tribe on the sales slip or on the retailer's cash register tape next to the record of the purchase. Off-reservation retailers who make exempt sales to Qualified Indians by delivery to the reservation must maintain records that show the date and means of delivery in addition to the other record keeping requirements in this subsection.

Liens. Levy may be made or liens will attach under warrants issued pursuant to K.S.A. 79-3617 to or on property belonging to an Indian organization or Indian residing on a reservation only to the extent allowed by law.

Stephen S. Richards
Secretary of Revenue