**Opinion Letter**

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| **Letter Number:** | **O-1999-15** |

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| **Tax Type:** | **Kansas Compensating Tax** |
| **Brief Description:** | **Nexus determination relating to a joint venture between a Tennessee publisher and a Kansas law firm to publish a monthly newsletter on employment law.** |
| **Keywords:** |  |
| **Approval Date:** | **06/28/1999** |

**Body:**

Office of Policy and Research

June 28, 1999

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Re: Kansas Compensating (Use) Tax

Dear XXXXX:

Thank you for your letter regarding whether a Tennessee business has nexus with Kansas for purposes of retailer’s compensating tax.

One document you provided is a copy of an agreement between a publisher which has agreed to “provide the money necessary to launch [a monthly newsletter on employment law]”, and a Kansas law firm which “will have total responsibility for and control over the editorial content of the monthly issues.” According to the agreement, “The venture will not pay any compensation to [the Kansas law firm] for your editorial work or to [the publisher] for our publishing expertise. But when the newsletter achieves a positive cash flow, which should occur at or shortly after the beginning of year two of publication, we will divide the cash flow 50 percent for your law firm and 50 percent for this company.”

For purposes of the Kansas compensating (use) tax, K.S.A. 79-3702 defines a “retailer doing business in this state” as follows:

(h) “Retailer doing business in this state” or any like term, means any retailer: (1) Having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within the state; (2) engaging in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave or other communication system for the purpose of effecting retail sales of tangible personal property.

The statute is interpreted, in part, by K.A.R. 92-20-7. The regulation provides, in subsection (a), as follows:

(a) A retailer shall be deemed to be doing business in this state when engaged in business within this state under, but not limited to, any of the following methods of transacting business:
(1) Maintaining directly, indirectly, or through a subsidiary, an office, distribution house, sales house, warehouse or other place of business;
(2) having an agent, salesperson, or solicitor operating within the state under the authority of the retailer or its subsidiary, regardless of whether the agent, salesperson or solicitor is located in this state permanently or temporarily, or whether the retailer or subsidiary is qualified to do business within this state; or
(3) soliciting orders within this state through catalogues or other advertising media.
The director shall require an out-of-state retailer to apply for authority to collect and remit the tax.
Each retailer shall be deemed to have agents in this state even though the agents solicit sales intermittently; e.g., once a year or oftener, and regardless of the residency of the agent.

Based on the information provided in the agreement you submitted, it appears the Tennessee publisher and Kansas law firm are engaged in a joint venture with regard to the publication of the newsletter. As a result, the offices and activities of the law firm in the state of Kansas satisfy the physical presence requirement of both the statute and the regulation. Therefore, we believe the Tennessee publisher does have nexus with the state of Kansas for purposes of the retailer’s compensating use tax.

I trust this information is of assistance. If I can be of further service, please feel free to contact me.

Sincerely,

Jim Weisgerber
Attorney
Tax Specialist

JW:jw

**Date Composed: 07/07/1999 Date Modified: 10/10/2001**