**Opinion Letter**

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| **Letter Number:** | **O-2003-005** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales tax revenues available for payment of special obligation revenue bonds.** |
| **Keywords:** |  |
| **Approval Date:** | **07/28/2003** |

**Body:**

Office of the Secretary

July 28, 2003

XXXX
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XXXX

Re: Sales tax revenues available for payment of special obligation revenue bonds

Dear XXXX:

The following is in response to your letter dated July 15, 2003 . . . .

Specifically, you ask whether the Kansas statutes authorizing tax increment financing should govern the collection and application of state and local sales tax revenues used to pay the interest and principal on special obligation bonds issued to finance [projects within a redevelopment district]. The Department has reviewed your inquiry and our response is as follows.

K.S.A. 12-1774, as recently amended by 2003 Senate Bill 285 and 2003 Senate Substitute for House Bill 2208, provides that special obligation bonds issued by a city to finance a redevelopment project shall be payable . . . “from a pledge of a portion of all of the revenue received by a city from transient guest, sales and use taxes collected pursuant to K.S.A. 12-1696 *et seq*., 79-3601 *et* *seq*., 79-3701 *et seq*. and 12-187 *et seq*., and amendments thereto, and which are collected from taxpayers doing business within that portion of the city’s redevelopment district established pursuant to K.S.A. 12-1771, and amendments thereto . . .” [K.A.R. 12-1774(a)(1)(D).]

First, with regard to the state portion of the sales taxes collected and remitted by retailers doing business within the redevelopment district, K.S.A. 2002 Supp. 79-3620(d) provides that such funds shall be credited to the city bond finance fund and used to retire special obligation bonds issued in connection with a redevelopment project. The same is also true for purposes of any state compensating use taxes collected and remitted by retailers doing business within the redevelopment district. [*See* K.S.A. 2002 Supp. 79-3710(d).]

Accordingly, we have no hesitation in concluding that state sales and use taxes collected by retailers doing business within the redevelopment district may be used to retire the bonds in question. The statutes cited in the foregoing paragraph clearly contemplate that the tax receipts credited to the city bond finance fund are to be used for this purpose.

We next consider whether the local sales taxes collected by retailers doing business within the redevelopment district may be used to retire these bonds. It is in this segment of our analysis that the provisions of the Streamlined Sales Tax Act, as recently codified by 2003 House Bill 2005, are relevant. Prior to enactment of HB 2005, K.S.A. 12-191 provided as follows:

All retail transactions consummated within a city or county having a retail sales tax, which transactions are subject to the Kansas retailers’ sales tax, shall also be subject to such county or city retail sales tax. Except as hereinafter provided, all retail sales, for the purpose of this act, shall be considered to have been consummated at the place of business of the retailer.

As of July 1, 2003, however, the above statute has been amended to provide that retail sales are deemed to be consummated at the location determined by the sourcing rules set forth in Section 16 of HB 2005, which include the following:

(a) The retail sale, excluding lease or rental, of a product shall be sourced as follows: (1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location; (2) when the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser’s donee, designated as such by the purchaser, occurs, . . .

As explained below, this statutory change in the methodology used to determine the place where sales are deemed to be consummated means that not all local sales taxes collected by retailers doing business in the redevelopment district may be used to retire the special obligation bonds in question.

As a practical matter, sales consummated at businesses located within a redevelopment district are subject to the local sales tax in effect in the city where the redevelopment district is located, which is consistent with prior law. In contrast, sales that are not consummated at businesses located within a redevelopment district are subject to the various local sales taxes in effect in the cities where the products are delivered.

K.S.A. 12-1774 limits the tax revenues that may be used to retire special obligation bonds to those that are “*received* by the city.” Sales made by retailers doing business in the [redevelopment district] and delivered to purchasers at destinations outside of XXXX, Kansas would not be subject to the sales tax imposed by XXXX, Kansas; rather, they would be subject to the sales taxes imposed by the cities in which those deliveries are made. The local sales taxes imposed on such sales would be attributable to and received by these other municipalities, not by the City of XXXX, Kansas, and therefore cannot be used to retire the special obligation bonds issued to fund this project.

In summary, the following tax revenues may be used to retire the special obligation bonds:

· all state sales and use taxes collected by retailers doing business in the redevelopment district

· all local sales taxes collected by retailers doing business in the redevelopment district on sales that are consummated at the retailer’s place of business

· all local sales taxes collected by retailers doing business in the redevelopment district on sales that are consummated by delivery to purchasers at locations in XXXX, Kansas

The following tax revenues may *not* be used to retire the special obligation bonds:

· all local sales taxes collected by retailers doing business in the redevelopment district on sales that are consummated by delivery to purchasers outside of XXXX, Kansas

In conclusion, we agree with your contention that the Kansas statutes authorizing tax increment financing govern the collection and application of state and local sales tax revenues used to fund the bonds issued to finance the redevelopment project. However, when K.S.A. 12-1774 is read in conjunction with the amendments to K.S.A. 12-191 contained in HB 2005, it is apparent that not all of the local sales taxes collected by retailers doing business in the redevelopment district are “received by” the City of XXXX, Kansas. Accordingly, only those state and local sales and use tax revenues specified above may be used to retire the bonds in question.

Please feel free to contact our office if you have any questions or wish to discuss this matter in further detail.

Sincerely,

Joan Wagnon
Secretary of Revenue

**Date Composed: 08/11/2003 Date Modified: 08/11/2003**