**Opinion Letter**

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| **Letter Number:** | **O-2007-003** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Services associated with the wholesale of gasoline, diesel fuel and oil.** |
| **Keywords:** |  |
| **Approval Date:** | **06/13/2007** |

**Body:**

Office of Policy & Research

June 13, 2007

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RE: Your e-mail received June 4, 2007

Dear XXXX:

Thank you for your recent e-mail. You work for XXXX. It wholesales gasoline, diesel fuel, and oil and provides a variety of services. You list the services and ask whether or not they are taxable when performed in Kansas.

The Kansas sales tax act taxes sales of tangible personal property and sales of certain enumerated services. The enumerated services include the services of installing or applying tangible personal property. The tax is levied regardless of whether the property being installed or applied remains tangible personal property become part of real property. Tax is also levied on the gross receipts from the services of repairing, servicing, altering, or maintaining tangible personal property or property that was once tangible personal property but has become part of real property. On a practical basis, this means that servicing anything that is man made is taxable, regardless of whether it is tangible personal property or fixtures or other man-made article that are attached to or have become part of real property.

The tax base for these taxable services is "gross receipts," which means the selling price or the total amount received from a sale of the services at retail. *K.S.A. 2003 Supp. 79-3602(o).* K.S.A. 2003 Supp. 79-3602(ll) contains the definition of "sales or selling price":

(1) "Sales or selling price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:
(A) The seller's cost of the property sold;
(B) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller and any other expense of the seller;
(C) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
(D) delivery charges;
(E) installation charges; and
(F) the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.
(2) "Sales or selling price" shall not include:
(A) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
(B) interest, financing and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;
(C) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and
(D) the amount equal to the allowance given for the trade-in of property, if separately stated on the invoice, billing or similar document given to the purchaser. *K.S.A. 2003 Supp. 79-3602(ll)(emphasis added).*

The tax base includes "all costs of transportation to the seller, all taxes imposed on the seller and any other expense of the seller." For service providers, the service provider's ("seller's") expenses often include the cost of transportation to the place where the services are performed, and the cost of meals, lodging, etc., while there or in transit. This means that when a service provider bills a customer, the tax base must include the travel expenses and other travel-related expenses, whether or not they are billed to the consumer as separate line item charges or on separate invoices. These charges are taxable even when the parties agree to have the customer pay the expenses under a separate contract. With this review in mind, I will answer your questions.

While your e-mail lists a number of different jobs, it does not explain who XXXX performs the jobs for. The Kansas legislature has granted broad exemption to many businesses and other entities, such as manufacturers, refineries, municipalities, oil well producers, and others. If a job is exempt, these businesses are required to provide you with an exemption certificate that identifies the Kansas statute under which they are claiming exemption. Accordingly, I will answer your questions as if XXXX is performing the services for fuel stations, and other types of retailers.

· Filtration, purification and decontaminating of underground storage tanks

**ANSWER:** Taxable as maintenance services or as the servicing of property that is or was once tangible personal property.

· Sampling of products within a customer's location (refinery pipes, power plants, fuel stations, prison systems)

**ANSWER:** Not taxable. However, testing and diagnostic services are taxable when they are done as part of taxable services, such as repair and maintenance services. Thus, in Kansas, any diagnostic service done to identify what needs to be repaired is taxable if the entity that performs the diagnostic services later performs repair services.

· Driving individuals and/or equipment to and from customer location

**ANSWER:** These charges are taxable if they are charges to the customer for the furnishing of a taxable service.

· Chemical cleaning at customers location (refinery pipes, power plants, fuel stations, prison systems)

**ANSWER:** Chemical cleaning done to equipment is usually performed as part of a taxable maintenance service.

· Used oil, oily water, grease trap, grit trap, used filters, used antifreeze, used spill pads (retrieval not resale)

**ANSWER:** These retrieval services done for a service station are not taxable.

· Tank repairs

**ANSWER:** Taxable whether or not the tank is affixed to or part of real property.

· Tank installation

**ANSWER:** Taxable unless the tax installation is done as part of the first or initial construction of a building, such as a service station.

· Tank delivery

**ANSWER:** Taxable if the delivery charges are being billed as part of the sale of the tank.

· Tank lease

**ANSWER:** Taxable whether or not the tank is affixed to or part of real property. Financing leases are treated as installment sales.

· Generator fuel analysis.

**ANSWER:** Not taxable. Testing and diagnostic services are not taxable unless they are done as part of taxable services, such as repair and maintenance services.

· Lubricants and Oil analysis

**ANSWER:** Not taxable. Testing and diagnostic services are not taxable unless they are done as part of taxable services, such as repair and maintenance services.

· Lubricants and Oil delivery

**ANSWER:** Taxable. Shipping and delivery charges are taxable whenever billed in connection with the taxable sale of tangible personal property.

· Fuels analysis

**ANSWER:** Not taxable. Testing and diagnostic services are not taxable unless they are done as part of taxable services, such as repair and maintenance services.

· Fuel delivery agreement

**ANSWER:**Taxable. Shipping and delivery charges for items being sold are taxable when they are billed as part of the taxable sale of tangible personal property.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 06/26/2007 Date Modified: 06/26/2007**