**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-110** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales and installation of carpet in a multistate chain of hotels.** |
| **Keywords:** |  |
| **Approval Date:** | **04/20/1999** |

**Body:**

Office of Policy and Research

April 20, 1999

XXXXX
XXXXX
XXXXX

RE: Your letter of March 15, 1999

Dear XXXX:

I have been asked to answer your letter that we received last month. XXXX owns and operates a chain of hotel’s throughout the United States. Your business must comply with the different sales tax treatments that states give to construction activities. One problem area for your multistate business operations is the varied treatment given by states to carpet sales and installation. As you are aware, many states have special rules which govern carpet sales and installation. This is because the sale and installation of carpet has aspects of being both a retail sale and a construction contract.

You employ an out-of state contractor/retailer to install carpet in the hotels that you operate in different states. You state: “They [the contractor/retailer] holds themselves out as a retailer, but also act as a contractor on such sales.” You ask what the appropriate sales and use tax treatment should be for work done in Kansas.

You did not provide copies of the contract or billings between you and the out-of-state contractor/retailer. In addition, you do not indicate whether the contractor/retailer performs the carpet installation itself or subcontracts with Kansas contractors to do the installation. You may not know this fact. Because of the absence of this documentation, I can discuss your question generally but cannot provide you with a definitive answer. As I will explain, copies of the contract and billings are needed to show whether the carpet is being provided as a retail sale with installation or under a contract for “improving . . . real . . . property of others.”

Kansas currently has no separate rule for carpet installation. Installation labor services for commercial buildings are taxed in Kansas, unless the project qualifies as “original construction” of a building. This is the building’s first or initial construction. This means that for carpet that is replaced in one of your existing hotels, tax is due on charges for both the carpeting and the installation. For carpet that is installed in one of your new hotels, tax is due on the charges for carpeting only.

This raises the basic problem that I have answering your letter. That is determining what the tax base should be for the cost of the carpeting. I do not know if you have contracted for the carpeting as a separate retail selling price based on the marked up retail selling price of the carpet to you or if the billing is for a standard installed amount without regard to the contractor/ retailer’s cost. The contract and billings between you and the contractor/retailer should establish whether the contract in question is a contract for the sale and installation of carpet or for the improvement of real property. Most carpet sales in Kansas are considered to be retail sales with installation. This is apparent where a homeowner picks out carpeting at a retailer and has it installed.

I also do not know how the contractor/retailer holds itself out to its home state taxing authorities on these jobs. The State of Kansas would try to afford the same treatment to the business that its home state affords, although this is not always possible. Please note that if the contract is a construction contract in which the home state is being paid sales tax on items removed from inventory, the tax base for the Kansas sales tax on taxable installation services would be the difference between the contract price and the tax paid carpeting and other materials. The out-of-state contractor/retailer also could bill the job as a lump sum amount with taxes included. If this were done, “tax included” would be stated on the billing to you from the contractor/retailer rather than a separate tax amount.

I hope that this discussion answers your questions. If not, please provide me with copies of the contract and billings between you and your contractor/retailer. Please call me at (785) 296-4008 if you need to discuss this matter further.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 07/07/1999 Date Modified: 10/11/2001**