**Private Letter Ruling**

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| **Ruling Number:** | **P-2001-137** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Wedding photography.** |
| **Keywords:** |  |
| **Approval Date:** | **12/17/2001** |

**Body:**

Office of Policy & Research

December 17, 2001

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RE: Your letter dated November 5, 2001

Dear XXXX:

Thank you for your recent letter. You and your wife run a wedding photography business out of Wichita, Kansas. You perform the services at wedding in Kansas and in other states. You provide wedding albums and prints to your clients. These as mailed to people in and outside Kansas. You ask how Kansas sales tax should be collected on these transactions.

In Kansas, photographers, photofinishers, and photo-refinishers are treated as vendors of photographs and other items purchased by their customers, whether or not produced to the special order of the customer. The photographer, photofinisher, or photo-refinisher is required to collect and remit sales tax on the total selling price charged to the customer for the photographs or service. In determining the selling price, no deduction may be taken for ancillary expenses such as travel time and related expenses, telephone calls, salaries or wages, models, and so forth, whether or not these expenses are separately stated in billings to purchasers. Sales tax applies to the total charge for aerial photographs, security photographs, films, and similar items produced under a contractual agreement which includes design time and similar labor charges.

Photographers who collect sales tax on their work may claim exemption on the chemicals, paper, film, and other materials that become a component part of the photograph or that are directly consumed in developing the film and photographs. If the film developing and printing is done by a third party, the photographer may claim resale exemption on those purchases. Because photographers routinely purchase consumable exempt from sales tax, charges for proofs and for sitting charges are subject to sales tax even if the client decides not to purchase a photograph.

Photographers, photofinishers, and photo-refinishers may also claim a resale exemption on purchases of tangible personal property that they directly resell or that they incorporated into products that they resell. In your case, this would include the wedding albums that you provide to customer. These sales could also include picture frames, picture albums that the purchaser fills, and sales of other items.

A photographer's purchase of items for their own use are taxable. Taxable purchases include purchases of cameras, lenses, lights, screens, projection lamps and tables, stands, props, cleaners, and other such property that a photographer uses or consumes in their business.

For sales tax purposes, a sale almost always occurs at the time and place that physical possession of the item being sold is transferred to the buyer. This is consistent with the UCC: "A 'sale' consists of the passing or title from the seller to the buyer for a price. . . ." *K.S.A. 84-2-106.*K.S.A. 84-2-401(2)(a)(2) directs "Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference with the physical delivery of the goods. . . ." These provisions are consistent with the sales tax regulation that instructs that when delivery of goods is made to the buyer in Kansas, the transaction subject to Kansas sales:

(a) When tangible personal property is sold within the state and the seller is obligated to deliver it to a point outside the state or to deliver it to a carrier or to the mails for transportation to a point without the state, the retail sales tax does not apply: Provided, The property is not returned to a point within this state. . . .
(c) . . . .However, where tangible personal property pursuant to a sale is delivered in this state to the buyer or his agent other than a common carrier, the sales tax applies, notwithstanding that the buyer may subsequently transport the property out of this state.

The Kansas retailers sales tax act recognizes that a sale takes place when the items being sold is delivered to the buyer. In your case, delivery of the wedding photographs by mail or a common carrier such as UPS means that the sale takes place when the buyer takes deliver and has the opportunity to inspect the goods being purchased. This rule means that sales tax is due on wedding albums that you deliver to a Kansas resident. No Kansas sales tax applies if you deliver a wedding album to someone in another state. This rule applies regardless of where the wedding took place or where you bill the buyer. For example, if you bill a client in Oklahoma for two wedding books and ship one book to the husband's parents in Kansas, the Kansas shipment is subject to Kansas sales tax. The wedding book delivered to Oklahoma is not subject to Kansas sales tax.

I hope that I have answered all of your questions. If anything is unclear, please call me at 785-296-3081 and we can review your questions. This is private letter ruling. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to make an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this ruling.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 12/27/2001 Date Modified: 12/28/2001**