**Opinion Letter**

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| **Letter Number:** | **O-1998-22** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Fund raising activities by schools/non-profit organizations.** |
| **Keywords:** |  |
| **Approval Date:** | **11/20/1998** |

**Body:**

Office of Policy & Research

November 20, 1998

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XXXX

RE: Your letter to Governor Bill Graves received November 5, 1998

Dear XXXX:

I have been asked to respond to your letter addressed to Governor Graves. In it, you express frustration with sales taxation of certain concession stand sales made by one of your student organizations.

Student concession stand sales have been taxed for more than 60 years in Kansas. I have enclosed a copy of *State Tax Comm. v. Board of Education*, 146 Kan. 722, 73 P.2d 49 (1937). Please note that the 1937 exception to the imposition is no longer Kansas law. This 1937 provision exempted sales when profits from the sales were used exclusively for educational expenditures. Your letter also asks about sales tax collection by Kansas churches. Like Kansas schools, churches are required to collect sales tax when they act as retailers.

Requiring government, schools, churches, and non-profit entities to collect sales tax when they engage in taxable businesses has a long history of support in Kansas. For example, University of Kansas students have always paid the same sales tax whether they shop at the Union Bookstore or at any of the competing commercial bookstores near campus. In Kansas, universities are required to pay sales tax on materials for dormitory construction and repairs, just like their private competitors. Kansas public utilities bear the same sales tax burdens as their private counterparts. While nonprofit hospitals are exempt from paying sales tax on their purchases, they must collect sales tax on sales made at their gift shops and on sales made to their staff members. Until recently, the Kansas legislature has avoided creating inequality in the marketplace by exempting sales made by non-profit groups that compete with private enterprise. During the last session, the legislature exempted sales by PTA’s, cookie sales by Girl Scouts, and a number of other sales by certain exempt groups.

You ask: “Why is it legal for the State to tax a non-profit organization?” In your case, the state is not taxing the non-profit organization. It is requiring them to collect sales tax on their retail sales, just like other retailers. Kansas law allows vendors to factor the sales tax from their concession stand receipts. To do this, the vendor’s price board must inform the public “Sales tax included.” “Factoring” means that on tax included sales, such as vending machine sales and on most concession stand sales, vendors figure their selling price with tax included and round off that amount to the next higher five or ten cent increment. This becomes the customer charge and allows change to be made quickly for large crowds. It avoids the inconvenience of figuring tax and making change in pennies.

Sales tax on such factored receipts is determined by first dividing the total receipts by one plus the state and local sales tax rate stated as a decimal. The sales tax that should be paid to the state is the difference between the total receipts minus the result of this division. When your group remits this amount as state and local sales tax, they are remitting sales tax that they have collected---they are not paying the tax from their funds.

If you continue to have concerns with sales tax being imposed on your school’s concession sales, you might wish to work with your state representatives to change the law. As noted above, the legislature has recently exempted sales made by a number of nonprofit organizations, and might wish to broaden those exemptions to include school concession stand sales. If you have any additional questions or wish to discuss this matter further, please call me at (785) 296-4008.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

cc: Governor Bill Graves, Representative XXXX
Enclosures to Mr. XXXX & Rep. XXXX

**Date Composed: 11/24/1998 Date Modified: 10/10/2001**