**Opinion Letter**

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| **Letter Number:** | **O-2003-003** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Roof repair services performed on a commercial building.** |
| **Keywords:** |  |
| **Approval Date:** | **03/11/2003** |

**Body:**

Office of Policy & Research

March 11, 2003

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XXXX

RE: Your e-mail dated March 6, 2003

Dear XXXX:

Thank you for your recent e-mail. You ask if roof repair services performed on a commercial building are subject to Kansas sales tax. Please be advised that these services are taxable.

Since 1977, Kansas has imposed sales tax on labor services that a contractor performs on certain real property. *See 1977 Senate Bill 49.* Taxable services included "installation," "application," "repairing," "servicing," "altering," and "maintaining" tangible personal property "regardless of whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate." *K.S.A. 79-3603(p).* This statutory language means that repair services, as well as the other listed services, are taxable when performed on buildings and on other real property structures. Thus, roof repair services are taxable under K.S.A. 79-3603(p) and K.S.A. 79-3603(q), since these services require installing new roofing materials as well as repairing existing materials.

In 1998, the Kansas legislature exempted residential repair and remodeling services. *See 1998 Senate Bill 493.* This new exemption does not extend to commercial buildings. Consequently, contractors who repair or remodel commercial buildings in Kansas are required to collect sales tax on their services.

In addition to residential work, sales tax does not apply when a project qualifies for the original construction exception. This exception covers work that involves: (1) the first or initial construction of a building; (2) the addition of a room or floor to the exterior of an existing building; or (3) the first or initial construction of a mill, plant, refinery, oil or gas well, feedlot, or water, gas, or electric distribution line owned by a municipal utility or a qualifying electric cooperative. An improvement done to land that abuts a qualifying project is also exempt when the work is done as part of the original construction project. By definition, a project qualifies as original construction when it calls for the repair of an existing building or other qualifying structure that was damaged or destroyed by fire, flood, tornado, lightning, explosion, or earthquake.

Sales of materials to contractors continue to be taxable regardless of whether the services are taxable or exempt from tax.

I believe that I have answered all of your questions. If you need additional assistance, please call me at 785-296-3081.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 03/31/2003 Date Modified: 03/31/2003**