**Opinion Letter**

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| **Letter Number:** | **O-2010-004** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Bond requirements for out-of-state contractors.** |
| **Keywords:** |  |
| **Approval Date:** | **06/15/2010** |

**Body:**

Office of Policy & Research

June 15, 2010

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RE: Your letter dated May 12, 2010

Dear XXXX:

Thank you for your recent letter. You ask for a private letter ruling concerning K.S.A. 79-1009 and K.S.A 79-1010. These statutes establish bond requirements for out-of-state contractors. I decline to issue a private letter ruling on this type of subject matter.

Private letter rulings provide retailers with the means to determine whether or not they are required to collect sales tax on a particular retail transaction. If the department advises a retailer in a written private letter ruling that it are not obligated to collect sales tax, the retailer can rely on the advice. If it is later determined that the department's advice is incorrect, the department cannot recover the uncollected sales tax from the retailer.

Limiting private letter rulings to retailer's tax collection duties is appropriate because the Kansas judiciary is the final arbiter of what the Kansas sales tax act says. An administrator cannot deem whether a taxpayer owes sales tax, income tax, or any other kind of Kansas tax. Kansas statutes and case law determine whether or not the tax is owed. Similarly, an administrator cannot limit how the Kansas judiciary construes tax laws, whether the administrator construed the law for one taxpayer or millions of taxpayers. A rule that allows administrators to be the final arbiter of whether or not tax is owed would lead to payoffs and widespread corruption.

A private letter ruling can prevent the department from pursuing a retailer for sales tax it does not collect from a customer. This is appropriate since the retailer is acting as a tax collector for the State of Kansas and is following the department's written advice. If the advice in the private letter ruling is incorrect, the department can pursue the consumer for the full amount of the unpaid sales tax despite the department's incorrect interpretation of the law in the private letter ruling.

K.S.A 79-1009 provides:

**Collection of taxes from non-resident contractors; registration for certain contracts.** To the end that the state of Kansas and the political subdivisions thereof may receive all taxes due in every instance, including contributions due under the employment security law, contractors, who are nonresidents of this state, desiring to engage in, prosecute, follow or carry on the business of contracting as defined in this act shall register with the secretary of revenue or the secretary's designee for each contract where the total contract price or compensation to be received amounts to more than $10,000, except that a foreign corporation authorized to do business in this state shall not be required to register under the provisions of this act. *(Underlining added).*

The underlined exception means that an out-of-state contractor that registers to do business with the Secretary of State is not required to register the contract with the Secretary of Revenue or to post the bond that would otherwise be required. These bonds were originally required under K.S.A. 79-1009 because of losses the State of Kansas and its political subdivisions incurred dealing with out-of-state contractors. Before the exception underlined in K.S.A. 79-1009 was enacted, Kansas and its political subdivision recovered millions of dollars in claims made under the bonds that otherwise would have been lost.

The exception underlined in K.S.A. 79-1009 effectively does away with the protection that out-of-state contractor bonds afford the State of Kansas and its political subdivisions. It allows out-of-state contractors to avoid buying a bond by registering its business with the Kansas Secretary of State, which costs far less than posting a surety bond with the department.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 06/16/2010 Date Modified: 06/16/2010**