**Opinion Letter**

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| **Letter Number:** | **O-2012-003** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Out-of-state sign company; installation of signs in Kansas by an in-state company.** |
| **Keywords:** |  |
| **Approval Date:** | **09/13/2012** |

**Body:**

Office of Policy & Research

September 13, 2012

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RE: Your letter dated July 10, 2012

Dear XXXX:

Thank you for your recent letter. You work for a Kansas business that has been hired by an out-of-state sign company to install its signs at different locations in Kansas. You ask if you can honor a Multi-Jurisdiction Exemption Certificate the out-of-state company issued that claims sales tax exemption on the taxable charges you will bill to the company for installing its signs in Kansas. The answer is no. There are several reasons for this.

First, a *Multi-Jurisdiction Exemption Certificate,* Form ST-28M, is intended to be used by out-of-state businesses that do not have nexus with Kansas and that are not registered with the department as Kansas retailers. Out-of-state retailers, wholesalers, and manufacturers may issue a Form ST-28M to Kansas sellers to exempt their purchases of tangible personal property (TPP) for resale, including TPP purchased for resale in the sense it will become an ingredient or component part of a manufactured product. The Form ST-28M specifically instructs: “[o]nly goods and merchandise (tangible personal property) are exempt . . .” under the certificate.

Your business was hired by the out-of-state sign company to install signs the out-of-state company sold to Kansas customers and agreed to install. Accordingly, your business is acting as an agent for the out-of-state company when it performs the installation work the out-of-state company is contractually obligated to perform for its customers in Kansas. This agency relationship qualifies the out-of-state company as a “retailer doing business in the state” for purposes of Kansas sales and compensating taxes. *K.S.A. 79-3702(h)(1)(B); K.S.A. 79-3603(“For the privilege of engaging in the business of selling tangible personal property at retail in this state . . . .”).* K.S.A. 79-3702(h)(1)(B) defines “retailer doing business in this state” to include:

(B) any retailer having an employee, independent contractor, agent, representative, salesperson, canvasser or solicitor operating in this state either permanently or temporarily, under the authority of the retailer or its subsidiary, for the purpose of selling, delivering, installing, assembling, servicing, repairing, soliciting sales or the taking of orders for tangible personal property;

Because the out-of-state sign company is a retailer doing business in Kansas, it is required to register with the department and collect Kansas retailers’ compensating use tax from its Kansas customers who buy the signs you install. The Form ST-28M is not intended to be used by out-of-state companies that are, or should be, registered to collect Kansas retailers’ sales or use tax.

Second, K.S.A. 79-3651(d) instructs:

(d) To lawfully present a resale exemption certificate the purchaser must be engaged in the business of selling property or services of the same kind that is purchased, hold a registration certificate, except as otherwise permitted in subsection (c) for drop shipment sales into this state, and at the time of purchase, either intend to resell the property in the regular course of business or be unable to ascertain whether the property will be resold or used for some other purpose. A resale exemption certificate may be used for resale of services to tangible personal property and not for services to real property.

As noted above, the Form ST-28M is intended to be used by out-of-state companies that buy TPP for resale from Kansas sellers. However, the out-of-state sign company is not buying TPP from your business. Instead, your business has agreed to perform taxable installation services the out-of-state company is obligated to provide under its signage contracts with Kansas customers. Nothing in a Form ST-28M suggests the exemption certificate is intended to exempt a service provider’s charges for taxable installation services.

Third, how Kansas sales tax applies to the sale and installation of signs is explained in K.A.R. 92-19-18a, *Signs and Billboards;*EDU-27,*Sales Tax Guidelines for Fabricators,* and EDU-29, *Sales Tax Guidelines for Contractor Fabricators and Contractor-Manufacturers.* I have enclosed copies of these publications for your review. It is clear from your letter the directives in these publications are not being followed.

These publications explain that how sign companies are required to charge tax to customers for the sale and installation of its signs. How tax is charged depends on the nature of the installation services performed where the sign is placed. For example, separately-stated charges for construction services performed to build a support pylon for a sign, or for electrical services performed to run wiring to the sign underground or behind walls, are taxed as construction services. If a sign company contracts to sell and install a sign and simply replace the old sign and connect the replacement sign to existing wiring, the installation charges are taxed as part of the sale and installation of the sign and not as separate construction services. *See K.S.A.79-3602(ll)(1)(E and enclosed department publications.* The sales tax treatments accorded to charges for different types of sign installation and construction services are explained in more detail in K.A.R. 92-19-18a, EDU-27, and EDU-29, which are enclosed.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

Enclosures

**Date Composed: 09/12/2012 Date Modified: 09/13/2012**