**Private Letter Ruling**

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| **Ruling Number:** | **P-1998-04** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Original construction and how sales tax applies to the completion of unfinished space within a building.** |
| **Keywords:** |  |
| **Approval Date:** | **02/02/1998** |

**Body:**

Office of Policy & Research

February 2, 1998

XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Dear XX XXXXXX:

The purpose of this letter is to respond to your letter dated January 22, 1997.

You stated that the XXXXXXXXXXXXXXXXXX had recently acquired a building in XXXXX, Ks. The building contains an amount of unfinished space. You asked if the completion on the unfinished space would qualify for exemption from sales tax as original construction.

You suggested that if additional information was needed that the architectural firm handling the this work be contacted. I spoke with XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXX and she indicated that building in question was constructed in 1976. The total present building consisted of approximately ten thousand square feet (10,000). One thousand square feet is office and the balance is production area formerly used to produce XXXXXXXXXXX.

The regulation K.A.R. 92-19-66b(f) states:

Services of installing or applying tangible personal property to complete unfinished portions of newly constructed buildings, facilities, shopping centers and malls as space within the building, facility, center or mall is leased or sold to the first or initial tenant of that space shall not be subject to sales tax. Services performed to install or apply tangible personal property for the completion of an unfinished portion of an existing building or facility shall not be taxable when:
(1) The service being rendered was called for in the original blue print, building plan or building specification at the time original construction of the building or facility was started, including any change orders issued during the original construction of the building or facility;
(2) the completion of the unfinished portion of the building or facility is within a time reasonably requisite to the original construction of the building or facility;
(3) the service rendered would have been performed at the time of the original construction of the building or facility, except for circumstances beyond the owner's control. Those circumstances shall not include instances in which the project is essentially completed and usable for the purposes intended, but the owner merely fell short of funds, or when the owner, after taking possession or occupancy of the building or facility, contracts for additional services; and

(4) the owner or occupant is the first or initial owner or occupant of the building or facility.

Based on the facts of your letter and a conversation with XX XXXXX the project architect, it would be the opinion of the Department that the completion of the unfinished area would not meet the criteria of the regulation to be defined as original construction.

Sincerely yours,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 02/04/1998 Date Modified: 10/10/2001**