**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-1998-139** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Buildings for farm use.** |
| **Keywords:** |  |
| **Approval Date:** | **10/02/1998** |

**Body:**

Office of Policy & Research

October 2, 1998

XXXXXXX
XXXXXXX
XXXXXXX
XXXXXXX

RE: Your letter inquiry

Dear XXXXXXX:

Thank you for providing me with a brochure that describes the XXXX. Your company is a dealer for these shelters and operates in Iowa, Missouri, Nebraska and Kansas. You ask what your sales tax reporting duties are for Kansas.

The XXXX have the appearances of Quonset huts, but are constructed of tubular steel arches or trussed steel arches that are placed on pilings or other supporting foundations. The arches are covered by fabric, which is strapped to the supports. XXXX are normally built for farm use.

These shelters are considered to be building for purposes of Kansas sales tax law. In Kansas contractors are considered to be consumers of the tangible personal property that they purchase to construct buildings or otherwise improve real property. *K.S.A. 79-3603(l).* This makes your company liable for use tax on the cost of the materials that you use in Kansas to construct or repair the shelters.

I believe that Iowa law exempts materials that a contractor/retailer or contractor/manufacturer removes from inventory for use in another state. Iowa Code Sec. 422.42(15) provides, in relevant part:

Sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders, for the erection of buildings or the alteration, repair or improvement of real property, are retail sales in whatever quantity sold. . . The tax shall not be due when materials are withdrawn from inventory for use in construction outside of Iowa and the tax shall not apply to tangible personal property purchased and consumed by the manufacturer as building materials in the performance by the manufacturer or its subcontractor of construction outside of Iowa.

Iowa Rule 701-19.4(4) provides:

Contractor-retailers do not pay tax on materials withdrawn from inventory for use in construction projects performed outside Iowa. See Iowa Code Supplement section 422.42(15).

Because of these laws, I believe that XXXX is not paying tax to Iowa on materials that it uses in Kansas to construct the shelters. If this is true, XXXX should accrue and remit compensating tax to Kansas on the cost of materials that are removed from Iowa inventory and incorporated into shelters built here. This includes lumber and other materials that you withdraw from Iowa inventory. If Iowa classifies you as something other than a contractor/retailer or contractor/manufacturer, please advise me and describe how you are paying tax to Iowa on materials that you use in other states.

When you perform a job in Kansas, you are required to pay sales tax on any additional materials that you purchase from Kansas vendors for use on the project. If you purchase materials in another state for use on a project here and pay sales tax at a rate that is less than the Kansas rate, you are required to accrue Kansas use tax on the difference between the two state tax rates. *K.S.A. 79-3705.*

Kansas taxes labor services when they are done to repair or maintain a building or other structure. Construction services that involve the first or initial construction of a building are exempt from sales tax. *K.S.A. 79-3603(p).* This means that for the original construction of one of your shelters, your tax reporting duties for Kansas are complete when you accrue compensating tax on the cost of the materials and remit it to Kansas, unless incidental taxes are due as described in the preceding paragraph. For repair or maintenance services, you must comply with the reporting requirements set out in K.A.R. 92-19-66b. I have enclosed a copy of the regulation for your use.

Kansas exempts sales of farm machinery and equipment. Farm equipment includes such things as feeders, waterers, bulk bins, and livestock panels. This exemption does not extend to materials that you buy to fabricate equipment. I hope that this answers all of your questions. Please call me at (785) 296-4008, if you have any additional questions that you wish to discuss.

This is a private letter ruling pursuant to K.A.R. 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This ruling will be revoked by operation of law without further department action if there is a change in the controlling statutes, administrative regulations, revenue rulings or case law that materially effects this determination.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

Enclosure

**Date Composed: 10/05/1998 Date Modified: 10/10/2001**