**Private Letter Ruling**

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| **Ruling Number:** | **P-1998-179** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Isolated or occasional sales of store fixtures.** |
| **Keywords:** |  |
| **Approval Date:** | **11/03/1998** |

**Body:**

Office of Policy & Research

November 3, 1998

XXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXX

Dear XXXXXXXXXXXXXXX:

The purpose of this letter is to respond to your letter dated October 30, 1998.

You seek a private letter ruling based on the following facts. You have entered into a transaction with XXXXXX to purchase shelving for as specified consideration. XXXXXXX is ceasing operations.XXXXXXXX is in the process of selling inventory and store fixtures.

Kansas taxes “the gross receipts received from the sale of tangible personal property at retail.” K.S.A. 79-3603(a). “Sale at retail” means “all sales made within the state of tangible personal property … for use or consumption and not for resale.” K.S.A. 79-3602(e). “Sale” is defined as the “exchange of tangible personal property, as well as the sale thereof for money, and every transaction, conditional or otherwise, for a consideration, constituting a sale…” 79-3602 (c).
The transaction set out above involves an “exchange of tangible personal property.” However, for the exchange to be subject to the Kansas sales or use tax, there must be “consideration.” If there is consideration, the transfer is a “sale” and subject to tax under the acts, unless explicitly exempt.

Kansas exempts “all isolated or occasional sales of tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 79-3603 and amendments thereto. . .” K.S.A. 79-3606.

“Isolated or occasional sale” means “the nonrecurring sale of tangible personal property, or services taxable hereunder by a person not engaged at the time of such sale in the business of selling such property or services. . .” K.S.A. 79-3602(j).

Whether or not a sale qualifies as isolated or occasional is a fact driven analysis. Your letter does not contain all the information needed to answer your request. Therefore, I will outline a probable scenario that has occurred. If the sale transaction is identical, then the sale is an isolated or occasional sale and is exempt from Kansas retailers’ sales tax.

The company that is selling you the shelves is engaged in a business other than selling shelving at a retail. The shelves were acquired by the company for use in their business. The company paid or should have paid sales or use tax at the time originally purchased or acquired. The shelves were used by the company for an administrative function or to display merchandise for sale. The shelves were not classified as inventory of the company. The company is ceasing operations and is the selling the shelves.

This is a private letter ruling pursuant to Kansas Administrative Regulation 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 private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this ruling.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 11/04/1998 Date Modified: 10/10/2001**