**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-181** |

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| **Tax Type:** | **Kansas Compensating Tax; Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales and use tax treatment of certain proficiency testing materials provided to pathology laboratories in Kansas.** |
| **Keywords:** |  |
| **Approval Date:** | **08/09/1999** |

**Body:**

Office of Policy and Research

August 9, 1999

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Re: Kansas Sales and Use Tax

Dear XXXXX,

Your correspondence of July 20, 1999, has been referred to me for response. Thank you for your inquiry.

By your letter you request a ruling regarding the proper sales and use tax treatment of certain proficiency testing materials (PT Materials) that are transferred by XXX XXXXX XXXXXXXXXX XXXXXXX XXXXX to pathology laboratories in Kansas in connection with proficiency testing services provided by XXX XXXXX to such laboratories. As a basis for your request you provide rather detailed background material which describes the process. The essence of your letter is as follows:

Federal law requires that every pathology laboratory in the United States be accredited periodically by the Department of Health and Human Services or another organization recognized by them as having standards that are equivalent to or more stringent than federal accreditation standards. XXX XXXXX is one of only a few organizations so recognized.

In order to obtain accreditation, a laboratory must, *inter alia*, participate in a proficiency testing program. A proficiency testing program evaluates the ability of participating laboratories to accurately perform diagnostic services for patients. Specifically, the proficiency testing program involves (i) the transfer to a participating laboratory of a specimen (i.e. the PT Materials) the composition of which is unknown to the laboratory, (ii) the analysis of the PT Materials by the laboratory and transmission of the laboratory’s findings to XXX XXXXX, and (iii) the processing and evaluation of the laboratory’s findings by XXX XXXXX.

Most of the PT Materials consist of a human serum or other biological base that is “spiked” with the analytes for which each participating laboratory must test. The specific proficiency testing modules in which a laboratory will enroll depends on the scope of the work done at the laboratory. Thus, a laboratory performing a wide range of analyses will participate in a larger number of modules than a laboratory doing only basic testing. Each specific proficiency testing module is priced separately.

The manufacturer generally delivers the PT Materials by common carrier to a third party repackager retained by XXX XXXXX or ships the PT Materials by common carrier directly to each participating laboratory. The manufacturer invoices XXX XXXXX for the PT Materials at the time the manufacturer ships the PT Materials to the repackager or directly to the laboratories. The repackager breaks down the manufacturer’s bulk shipment in to individual packages for shipment to the laboratories, adds printed instructions supplied by XXX XXXXX, and then ships the materials by U.S. Mail or by common carrier to the participating laboratories.

The laboratory has no independent use for the PT Materials apart from participating in the testing program. Once a participating laboratory has concluded its analysis of the PT Materials, the laboratory generally disposes of those materials. The laboratory sends a report of its analysis to XXX XXXXX which evaluates the laboratory’s analysis, and provides its findings to the laboratory and to the accreditation organization designated by the laboratory.

XXX XXXXX charges laboratories a single subscription amount for participating in the proficiency testing program. No separate charge is made for the PT Materials and for the testing service.

In your letter you request three rulings. These are:

I. The “true object” of XXX XXXXX’s proficiency testing program is the administration of a proficiency testing service rather than the provision of the PT Materials; therefore XXX XXXXX’s charges for participation in the proficiency testing program are not subject to sales or use tax, and XXX XXXXX is deemed to be the consumer of the PT Materials.

II. XXX XXXXX is not subject to use tax on specimens shipped to Kansas laboratories by common carrier from outside Kansas.

III. If XXX XXXXX is subject to use tax on specimens shipped to Kansas laboratories by common carriers from outside Kansas, XXX XXXXX is entitled to a credit for tax properly paid to the state from which such materials were shipped.

In deciding whether a particular transaction is subject to Kansas sales tax, a two step analysis is generally necessary. The first step is to determine whether the sales tax act generally imposes tax on the type of transaction in question. The second step is to determine whether the act provides an exemption for the particular type of transaction.

As a rule, sales tax is imposed on all transactions involving the transfer of tangible personal property. With services, however, tax is imposed only on those transactions which are specifically enumerated in the sales tax act. Exemptions for transactions involving either tangible personal property or services are allowed as specifically enumerated.

After reviewing the information provided in your letter, we have concluded the proficiency testing service provided by XXX XXXXX is not subject to the Kansas sales tax. This determination is based on our belief that the type of service XXX XXXXX provides has not been enumerated in the sales tax act as a service which is subject to tax.

In addition, we find the PT Materials in question are incidental to the testing service XXX XXXXX provides. As a result, pursuant to your request, we find XXX XXXXX is the consumer of the PT Materials. We also find XXX XXXXX is not subject to use tax on specimens shipped to Kansas laboratories by common carrier from outside Kansas.

You should be aware that XXX XXXXX must pay sales tax on all articles of tangible personal property and all services purchased by it in Kansas which enables it to provide the nontaxable service.

This private letter ruling is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to make 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 private letter ruling.

I trust this information is of assistance. If I can be of further service, please feel free to contact me.

Sincerely,

Jim Weisgerber
Attorney
Tax Specialist

JW:jw

**Date Composed: 09/10/1999 Date Modified: 10/10/2001**