**Private Letter Ruling**

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| **Ruling Number:** | **P-2001-028** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Leasebacks.** |
| **Keywords:** |  |
| **Approval Date:** | **03/27/2001** |

**Body:**

Office of Policy & Research

March 27, 2001

TTTTTTTTTTTTTTT

Dear Mr. TTTTTT:

We wish to acknowledge receipt of your letter dated February 16, 2001, regarding the application of Kansas Retailers’ Sales tax.

K.S.A. 79-3603(h) imposes a sales tax upon: “the gross receipts from the service of renting or leasing tangible personal property. . .”

In your letter you have raised the question as to whether certain transactions referred to as “leases” but in fact are in the nature of financing transactions, should be subject to the tax imposed by K.S.A. 79-3603(h).

On this regard, the Department of Revenue has ruled that K.S.A. 79-3603(h) does not apply to any transaction which is required to be reported as a sale and purchase by the lessor and lessee respectively for federal income tax purposes. However, if the subject of such transaction is tangible personal property, the transaction would be considered a sale of such property, subject to the tax imposed by K.S.A. 79-3603(a).

In the case of a transaction which is referred to as a “lease” but which constitutes a “sale” for sales tax purposes, the gross receipts upon which any Kansas sales or use tax may be due must equal to whichever of the following situations is applicable:

1) When reporting sales or use tax on an accrual basis, gross receipts are defined as the sales price, as determined for federal income tax purposes.

2) When reporting sales or use tax on a cash basis, gross receipts are the amount of each lease payment, minus interest or other charges, as determined for federal income tax purposes.

The department has determined that the sale-leaseback transaction that you have described in your letter will be considered a financing transaction, and the original purchase by the lessor of the steel trash containers and the vehicle would not be subject to Kansas sales or use tax, but the leaseback to the lessee would be subject to Kansas sales or use tax, if it meets the following criteria:

1) Both the sale and the leaseback are contracted for and controlled by one document, agreement or contract.

2) The leaseback is property accounted for, and reported as, a sale and purchase by the lessor and lessee respectively for federal income tax purposes.

3) The lessor (third party bank) is properly registered to collect and remit the appropriate Kansas sales or use tax.

In closing, your client would be able to purchase the raw materials to manufacture the steel trash containers exempt from sales tax pursuant to K.S.A. 79-3606(m), as tangible personal property which becomes an ingredient or component part of property manufactured for ultimate sale at retail.

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 in the future by the operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or published revenue ruling, that materially effects this private letter ruling. If I may be of further assistance, please contact me at your earliest convenience at (785) 296-7776.

Sincerely yours,

Thomas P. Browne, Jr.
Tax Specialist

TPB

**Date Composed: 04/03/2001 Date Modified: 10/11/2001**