**Private Letter Ruling**

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| **Ruling Number:** | **P-2001-129** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **School PTO's.** |
| **Keywords:** |  |
| **Approval Date:** | **11/29/2001** |

**Body:**

Office of Policy & Research

November 29, 2001

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Re: Kansas Sales Tax

Dear XXXXX:

Your correspondence of November 26, 2001 has been referred to me for response. Thank you for your inquiry.

By your letter you request our advice with regard to the following scenario and questions presented on behalf of your school’s PTO:

The PTO hosts a carnival. There is not an admission charge. Anyone can attend. The carnival includes games, food, and a silent auction.

As regards the games, tickets can be purchased in advance 5 tickets for $1.00 or the day of the carnival 4 tickets for $1.00. Playing a game requires 1 ticket. Anyone playing the game receives a prize (while the prize is not expensive it is a nice prize such as a package of clay, ball, whistle – but nonetheless a token prize). Historically, the PTO has paid sales tax on the amount of money of game tickets sold. [A parent] is suggesting that it is not necessary to pay sales tax because a prize is given to anyone playing the games. Would that be correct or not?

Secondly, the ticket may be used this year to enter into a cakewalk contest where only one child per round will receive the cake. Should sales tax be paid on these tickets for the cakewalk?

Third, the PTO is renting a “moonwalk” and charges one ticket to participate in the moonwalk. Should sales tax be paid on the moonwalk revenues?

In response to your request, please be advised the Kansas sales tax is imposed by K.S.A. 79-3603. The statute imposes sales tax on all sales of tangible personal property, and on certain enumerated services. The statute provides, in pertinent part, for the imposition of tax on:

(a) The gross receipts received from the sale of tangible personal property at retail within this state;

(e) the gross receipts from the sale of admissions to any place providing amusement, entertainment or recreation services including admissions to state, county, district and local fairs, but such tax shall not be levied and collected upon the gross receipts received from sales of admissions to any cultural and historical event which occurs triennially;

(m) the gross receipts received from fees and charges by public and private clubs, drinking establishments, organizations and businesses for participation in sports, games and other recreational activities, but such tax shall not be levied and collect upon the gross receipts received from: (1) Fees and charges by any political subdivision, by any organization exempt from property taxation pursuant to paragraph Ninth of K.S.A. 79-201, and amendments thereto, or by any youth recreation organization exclusively providing services to persons 18 years of age or younger which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for participation in sports, games and other recreational activities; and (2) entry fees and charges for participation in a special event or tournament sanctioned by a national sporting association to which spectators are charged an admission which is taxable pursuant to subsection (e);

Exemptions from sales tax are found in K.S.A. 79-3606. Subsection (yy) of the statute provides an exemption for:

(yy) all sales of tangible personal property and services purchased by a parent-teacher association or organization, and all sales of tangible personal property by or on behalf of such association or organization;

The gist of the statute is that sales of tangible personal property made by a PTO are exempt from sales tax, while sales of services made by a PTO are subject to sales tax. For example, tickets exchanged for food or drink provided by a PTO, proceeds from a silent auction held by or on behalf of a PTO, or the sale of school supplies, t-shirts, yearbooks, etc. by a PTO are exempt from sales tax as a sale of tangible personal property. On the other hand, sales of tickets for the right to play carnival games, participate in a cakewalk, or use a “moonwalk” are considered to be services, and are therefore subject to Kansas sales tax.

For your reference, please find enclosed a copy of the Kansas Sales And Compensating Use Tax booklet published in March of 2000.

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

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Enclosure: Kansas Sales And Compensating Use Tax

**Date Composed: 12/13/2001 Date Modified: 12/13/2001**