**Private Letter Ruling**

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| **Ruling Number:** | **P-2002-092** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Jewelry store sale items delivered to in-state and out-of-state buyers.** |
| **Keywords:** |  |
| **Approval Date:** | **11/12/2002** |

**Body:**

Office of Policy & Research

November 12, 2002

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XXXX

RE: Your e-mail dated November 5, 2001

Dear XXXX:

Thank you for your recent letter. You work for a jewelry store and ask when Kansas sales tax applies to sale items that are delivered to in-state and out-of-state buyers.

For Kansas sales tax purposes, a sale almost always occurs at the time and place that physical possession of the item being sold is transferred to the buyer. This is consistent with the UCC: "A 'sale' consists of the passing or title from the seller to the buyer for a price. . . ." *K.S.A. 84-2-106.*K.S.A. 84-2-401(2)(a)(2) directs: "Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference with the physical delivery of the goods. . . ." These provisions are consistent with subsection (c) of the sales tax regulation K.A.R. 92-19-29. It instructs that when delivery of goods is made to the buyer in Kansas, the transaction subject to Kansas sales:

(a) When tangible personal property is sold within the state and the seller is obligated to deliver it to a point outside the state or to deliver it to a carrier or to the mails for transportation to a point without the state, the retail sales tax does not apply: Provided, The property is not returned to a point within this state. . . .
(c) . . . .However, where tangible personal property pursuant to a sale is delivered in this state to the buyer or his agent other than a common carrier, the sales tax applies, notwithstanding that the buyer may subsequently transport the property out of this state. *K.A.R. 92-19-29.*

Under this regulation, sales tax is imposed on the selling price of each item or article of tangible personal property, when the property is delivered to the purchaser or his representative in Kansas. The following guidelines reflect the requirements of this regulation:

· Kansas sales tax applies if goods are sold within Kansas and possession is take by the buyer or his agent in Kansas. This rule applies regardless of the fact that the goods are to be transported to an out of state destination by the purchaser immediately upon deliver. For example: If goods are sold by a Kansas retailer at his place of business in Kansas to a Missouri resident who will immediately take the goods into Missouri for use there, the Kansas sales tax applies.

· Kansas sales tax does not apply when:

§ The retailer is required by the terms of the sales contract to deliver the goods to an out of state destination using the retailer's own mode of transportation, such as a car or truck.
§ The retailer is required by the terms of the contract to deliver the goods to a common carrier for delivery to an out of state destination. Common carriers include carriers such as UPS and Fed Ex.
§ The retailer is required by the terms of the contract to deliver the goods to the United States Postal Service for delivery to an out of state destination.

The rules set forth in the regulation spring from the Commerce Clause that prohibits a state from taxing sales that are made in another state. For example, Kansas cannot tax sales made in Missouri and Missouri cannot tax sales made in Kansas. Therefore, all over-the-counter sales made at your location in Kansas are subject to state and local Kansas sales tax. So are other sales that you deliver to a buyer in Kansas. This rule applies whether the buyer who takes delivery in your store is from Kansas, Missouri, the United Kingdom, or Canada. When an item is delivered to a customer outside your store at a Kansas address, the sale is also subject to Kansas sales tax. Taxable sales includes all sales that are delivered to a Kansas address, whether you deliver it in a company car, or ship it by UPS, Fed Ex, or the United States Post Office. Sales that are not subject to tax are all sales that are delivered to an address outside Kansas , whether you deliver it there in a company car, or ship it there by UPS, Fed Ex, or the United States Post Office

I hope that my letter answers all of your questions. If anything is unclear, please call me at 785-296-3081 and we can review your questions. This is private letter ruling. It 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 ruling.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 11/14/2002 Date Modified: 11/15/2002**