**Private Letter Ruling**

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| **Ruling Number:** | **P-2003-059** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **501(c)(3) organizations.** |
| **Keywords:** |  |
| **Approval Date:** | **12/12/2003** |

**Body:**

Office of Policy & Research

December 12, 2003

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XXXX

RE: Your letter mailed November 24, 2003

Dear XXXX:

Thank you for your recent letter. You represent YYYY ("YYY"), a non-profit corporation located in Arkansas City. You ask if YYY qualifies for exemption from Kansas sales tax on its purchases. In support of your inquiry, you have submitted: 1) a copy of your bylaws; 2) a statement of your 501(c)3 status; and 3) a narrative that describes the purpose and objectives of the organization. The material states:

1. We provide free pregnancy testing and discuss alternatives to abortion.
2. We operate an adoption agency licensed by the State of Kansas.
3. We offer a program called "Work of Art" that provides guidance for women who have had a pregnancy loss of any kind.
4. We offer long-term guidance to help marriages and individuals in crisis.
5. The women served are provided clothes, diapers, formula, and baby equipment as they continue in an integrated program of life skills.
6. We offer a long-term program for drug and alcohol problems called "The Most Excellent Way" which focuses on biblical truths.
7. We have instituted "The Right Finish" which operates as a Christian Finishing School to help young women make healthy-life style choices.
8. We are an integrated resource center for life, health and sexual issues available to the entire community, providing public speaking, videos and the latest curriculum available.
Your description of the organization establishes that it does not qualify for exemption from paying Kansas retailers sales tax on its purchases.

Unlike some states, Kansas does not have a broad-based sales tax exemption for 501(c)(3) organizations. A number of 501(c)(3) organizations have petitioned the Kansas legislature and been granted an exempt status. These include the following groups.

(1) The American Heart Association, Kansas Affiliate, Inc. for the purposes of providing education, training, certification in emergency cardiac care, research and other related services to reduce disability and death from cardiovascular diseases and stroke;
(2) the Kansas Alliance for the Mentally Ill, Inc. for the purpose of advocacy for persons with mental illness and to education, research and support for their families;
(3) the Kansas Mental Illness Awareness Council for the purposes of advocacy for persons who are mentally ill and to education, research and support for them and their families;
(4) the American Diabetes Association Kansas Affiliate, Inc. for the purpose of eliminating diabetes through medical research, public education focusing on disease prevention and education, patient education including information on coping with diabetes, and professional education and training;
(5) the American Lung Association of Kansas, Inc. for the purpose of eliminating all lung diseases through medical research, public education including information on coping with lung diseases, professional education and training related to lung disease and other related services to reduce the incidence of disability and death due to lung disease;
(6) the Kansas chapters of the Alzheimer's Disease and Related Disorders Association, Inc. for the purpose of providing assistance and support to persons in Kansas with Alzheimer's disease, and their families and caregivers;
(7) the Kansas chapters of the Parkinson's disease association for the purpose of eliminating Parkinson's disease through medical research and public and professional education related to such disease; and
(8) the National Kidney Foundation of Kansas and Western Missouri for the purpose of eliminating kidney disease through medical research and public and private education related to such disease. *2003 HB 2005, Sec. 6(vv).*

As this shows, the Kansas legislature typically grants sales tax exemptions only to specific organizations. Your organization is not one of those listed.

There are two broad-based exemptions that might apply to YYY. Because many of YYY programs appear to be spiritually based, one is the exemption for "religious organizations." *K.S.A. 79-3606(aaa).*The other broad based exemption is for "education institutions." This conceivably could apply to YYY because it offers education programs. A review of Kansas law show that YYY does not qualify for either of these exemptions.

The term "religious organization" has been used in Kansas statutes since the nineteenth century. The court cases that have construe the term provide a fairly clear meaning of the term for tax purposes. These cases allowed the term to be defined for sales tax purposes. This definition is set forth in Notice 99-14:

For purposes of the Kansas retailers’ sales tax act, “religious organization” shall mean any organization, church, body of communicants, or other group that gathers in common membership for mutual support and edification, in piety, worship, and religious observance, at an established place of worship which the organization maintains for the purpose of conducting regularly scheduled religious services or meetings, and of which no part of the net earnings of such organization inures to the benefit of any private shareholder or individual member. *See K.S.A. 79-4701(e); K.S.A. 8-1730a.*

Nothing in the by-laws of YYY suggest that the organization is a "group that gathers in common membership for mutual support and edification, in piety, worship, and religious observance, at an established place of worship which the organization maintains for the purpose of conducting regularly scheduled religious services or meetings. . . ." Accordingly, YYY does not qualify for exemption from Kansas sales tax as a religious organization.

The second broad-based exemption that might apply is for educational institutions. The Kansas legislature defined the term “educational institution” for purposes of K.S.A. 79-3606(b) and K.S.A. 79-3606(c). This definition provides:

(s) “Educational institution'” means any nonprofit school, college and university that offers education at a level above the twelfth grade, and conducts regular classes and courses of study required for accreditation by, or membership in, the North Central Association of Colleges and Schools, the state board of education, or that otherwise qualify as an “educational institution,” as defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall include: (1) A group of educational institutions that operates exclusively for an educational purpose; (2) non-profit endowment associations and foundations organized and operated exclusively to receive, hold, invest and administer moneys and property as a permanent fund for the support and sole benefit of an educational institution; (3) nonprofit trusts, foundations and other entities organized and operated principally to hold and own receipts from intercollegiate sporting events and to disburse such receipts, as well as grants and gifts, in the interest of collegiate and intercollegiate athletic programs for the support and sole benefit of an educational institution; and (4) nonprofit trusts, foundations and other entities organized and operated for the primary purpose of encouraging, fostering and conducting scholarly investigations and industrial and other types of research for the support and sole benefit of an educational institution.

This definition shows that the term “educational institutions” includes accredited colleges and universities, certain other schools above the twelfth grade, and certain corporations and foundations that serve as adjuncts to colleges and universities. YYY does not fit into any of these categories. Accordingly, YYY does not qualify for exemption from sales tax. YYY must pay Kansas sales tax on all of its purchases in Kansas.

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.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 12/19/2003 Date Modified: 12/19/2003**