**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-2018-001** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales Tax on labor for Construction contract** |
| **Keywords:** | **Sales Tax and use of a resale exemption certificate on Labor for construction contracts** |
| **Effective Date:** | **03/15/2018** |
| **Approval Date:** | **03/15/2018** |

**Body:**

STATE OF KANSAS

|  |  |  |
| --- | --- | --- |
| **Tax Policy** 109 SW 9th STREET PO BOX 3506 TOPEKA, KS 66601-3506 | http://rvpolicy.kdor.ks.gov/Pilots/Ntrntpil/IPILv1x0.NSF/ae2ee39f7748055f8625655b004e9335/badf1f4bec082a0e86258256004b2b97/Body/5.3C94?OpenElement&FieldElemFormat=gif | DEPARTMENT OF REVENUE PHONE: 785-368-8222 FAX: 785-296-7928 www.ksrevenue.org |
| http://rvpolicy.kdor.ks.gov/icons/ecblank.gif | GOVERNOR JEFF COLYER, M.D. SAMUEL M. WILLIAMS, SECRETARY |  |

March 15, 2018

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
  
< XXXXXXXXXX >  
  
Re: Kansas Sales Tax  
  
Dear Mr. XXXXXXXXXX:  
  
I am in receipt of your correspondence of March 13, 2018. Thank you for your inquiry.  
  
By your e-mail you have requested our advice regarding Kansas sales tax. Specifically, your e-mail states:

I am taking the advice of Jeff Coffman and reaching out to you for assistance in receiving a Private Letter Ruling. At XXXXXXXXXX, we are well versed in the Kansas statutes that apply to labor services and the proper calculation of the sales tax base for construction contracts. We have executed maintenance contracts with a number of companies that have a poor understanding of the taxability of construction labor services in Kansas. These maintenance companies register as retailers for Kansas sales taxes but attempt to utilize a Kansas Resale Exemption Certificate to purchase and resell the labor and materials provided by XXXXXXXXXX as a contractor. I have attached an example of a Kansas Resale Exemption Certificate provided to XXXXXXXXXX by a customer, in spite of the clear language in the Labor Services section of the Certificate that indicates contractor labor services may not be resold. With regard to jobs performed for customers such as this, XXXXXXXXXX properly purchases all job materials, supplies, rentals, etc. subject to Kansas sales tax. On our quote or invoice to our customer, we take great pains to ensure that Kansas labor taxes are not separately listed. Customers such as this take the liberty of deducting sales taxes listed on our quote or invoice. The customer is unaware of the proper sales tax base for contracted jobs, and charges sales taxes in full to the ultimate end-user customer in spite of the fact that Kansas sales taxes have been charged by XXXXXXXXXX on our portion of the work.  
  
I would like a Private Letter Ruling to illustrate the proper procedure for paying Kansas sales taxes to a contractor, followed by a full exclusion of the amount paid to a contractor from the sales tax base. In nearly all cases where sales taxes are short paid by customer using a Resale Exemption Certificate, XXXXXXXXXX is forced to absorb the taxes paid to the State of Kansas with regard to the particular job.  
  
If you would like for me prepare a more definitive fact pattern in which to apply the ruling, I will be glad to do so.  
  
If you see any opportunities for XXXXXXXXXX to work with its customers to apply for sales tax refunds, please advise.

In response to your inquiry, I believe the explanation you seek can be found in our Publication KS-1525 Sales & Use Tax for Contractors, Subcontractors, and Repairmen, which is available through our website at: [https://www.ksrevenue.org/pdf/pub1525.pdf#search=KS-1525](https://www.ksrevenue.org/pdf/pub1525.pdf) On page 9 of the publication, under the caption “Contractor’s Liability” we state:

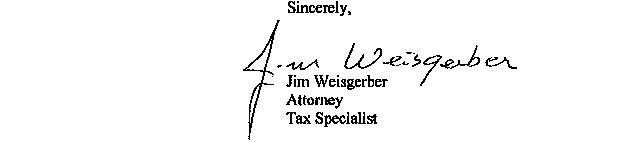
**CONTRACTOR’S LIABILITY**

***GENERAL RULE: EACH CONTRACTOR MUST COLLECT AND REMIT THE SALES TAX ON THEIR TAXABLE LABOR SERVICES.***

Each contractor or subcontractor is responsible for collecting and remitting sales tax on his/her taxable labor services, **including taxable services performed for other contractors**. A general contractor may NOT assume the sales tax for the subcontractor because it will be collected from the customer by the general contractor.  
***Labor services on real property cannot be resold***. A subcontractor performing taxable services on real property for a general contractor is required to charge the general contractor (and the general contractor is required to pay) sales tax. The general contractor cannot purchase subcontractor labor services exempt from tax with a Resale Exemption Certificate.

**Example** You are a subcontractor on an office remodel project; your labor services are taxable. Your invoice to the general contractor must include the applicable state and local sales tax on your labor services.

Taxable labor services of a subcontractor may only be purchased by a general contractor without tax with a PEC (Project Exemption Certificate) – see page 12 – or one of the exempt certificates discussed on page 14. In the event a general contractor provides a subcontractor with an exemption certificate stating the transaction was not subject to sales tax and it is later determined the transaction was taxable, the Department of Revenue may proceed directly against the general contractor for the unpaid tax.  
In most retail transactions, the sales tax is usually a separately stated amount on the invoice. However, if you do not separately state the amount of sales tax due on your labor services in the contract, bid estimates, customer billings, or other evidence of the transaction, you must state in the document that all applicable sales taxes are included in the selling price. If the statement “ALL APPLICABLE SALES TAXES ARE INCLUDED” does not appear on any of the documentation, it is presumed that the customer was not charged sales tax. See also *Invoicing the Customer*herein.  
If the general contractor pays sales tax to a subcontractor and the subcontractor does not remit the tax to the Department of Revenue, the Department of Revenue will proceed against the subcontractor. If the general contractor has not paid the sales tax to the subcontractor and it is determined sales tax should have been collected, then the Department of Revenue may proceed directly against the general contractor (the consumer) for collection of the tax.

I trust this information is of assistance. If I can be of further service, please feel free to contact me.  
  
  
JW:jw  
  
*NOTE: This private letter ruling / opinion letter is based solely on the facts provided in your request for advice. If material facts or information were not disclosed this letter is null and void. This letter will be revoked without further action by the Department if the statutes, administrative regulations, published revenue rulings, or court decisions that materially affect this opinion are changed.*  
  
  
  
**Date Composed: 03/20/2018 Date Modified: 04/17/2018**