



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 126

Robert L. Farmer
Fort Scott City Attorney
One East Third Street
Fort Scott, Kansas 66701

Re: Taxation--Kansas Retailers' Sales Tax--
Exemptions

Synopsis: Non-profit commercial enterprises that meet the requirements of section 3 of the enterprise zone act are eligible for the sales tax exemption provided by K.S.A. 1991 Supp. 79-3606(ee), as amended. Cited herein: K.S.A. 2-2602; 2-3001; 12-17,108 (repealed, L. 1992, ch. 202, § 15); K.S.A. 1991 Supp. 32-964, as amended by L. 1992, ch. 292, § 1; 74-8103, as amended by L. 1992, ch. 221, § 3; 79-3271; K.S.A. 79-32,153; 79-34,108, as amended by L. 1992, ch. 106, § 30; K.S.A. 1991 Supp. 79-3606, as amended by L. 1992, ch. 202, § 13; K.S.A. 79-4301, Art. IV; L. 1992, ch. 202, §§ 2, 3.

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Dear Mr. Farmer:

You request our opinion regarding sales tax exemption under the new Kansas enterprise zone act. Specifically you inquire whether a non-profit corporation can qualify for such an exemption.

Previously K.S.A. 1991 Supp. 79-3606(ee) authorized a sales tax exemption for property and services used in constructing,

reconstructing, enlarging or remodeling a qualified business facility located within an enterprise zone if that business facility qualified for an income tax credit under K.S.A. 79-32,153. You state that since non-profit corporations do not pay income taxes, they do not qualify for an income tax credit and thus could not qualify for a sales tax exemption under K.S.A. 1991 Supp. 79-3606(ee).

The 1992 legislature removed the income tax credit qualification requirement from K.S.A. 1991 Supp. 79-3606(ee), amending the statute to read as follows:

"The following shall be exempt from the tax imposed by this act:

. . . .

"(ee) all sales of tangible personal property or services purchased for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business, or retail business which meets the requirements established in section 3 and amendments thereto, and the sale and installation of machinery and equipment purchased for installation at any such business or retail business. . . ."
." K.S.A. 1991 Supp. 79-3606, as amended by L. 1992, ch. 202, § 13.

Section 3 of the bill sets forth the requirements for eligibility for this sales tax exemption for manufacturing, nonmanufacturing and retail businesses. You focus on the requirements for a nonmanufacturing business, so we will do the same. Section 3(b) provides as follows:

"(b) A nonmanufacturing business may be eligible for a sales tax exemption under the provisions of subsection (ee) of K.S.A. 79-3606, and amendments thereto, if the nonmanufacturing business complies with the following requirements:

"(1) A nonmanufacturing business shall provide documented evidence of job expansion involving the employment of at least five additional full-time employees; and

"(2) a nonmanufacturing business located within the state of Kansas that has documented evidence of job expansion as provided in paragraph (1), which relocates in another city or county within the state of Kansas must receive approval from the secretary [of commerce and housing] prior to qualifying for the sales tax exemption in subsection (ee) of K.S.A. 79-3606, and amendments thereto, except that approval by the secretary shall not be required if the nonmanufacturing business relocates within the same city." L. 1992, ch. 202, § 3.

"Nonmanufacturing" business is defined in section 2 as "any commercial enterprise other than a manufacturing business or a retail business." L. 1992. ch. 202, § 2(e). Thus, if a non-profit corporation is a "commercial enterprise" and meets the requirements of section 3(b), it would qualify for the sales tax exemption in K.S.A. 1991 Supp. 79-3606(ee).

"Commercial enterprise" is not defined in the enterprise zone act. The word "commercial" is used in several terms that are defined in Kansas statutes, none of which imply a for-profit limitation. See K.S.A. 2-2602; 2-3001; K.S.A. 1991 Supp. 32-964, as amended by L. 1992, ch. 292, § 1; 79-3271; K.S.A. 79-34,108, as amended by L. 1992, ch. 106, § 30; 79-4301, Art. IV. "Commercial" is defined generally as follows:

"Relates to or is connected with trade and traffic or commerce in general; is occupied with business and commerce. (Citation omitted). Generic term for most all aspects of buying and selling." Black's Law Dictionary 245 (5th Ed. 1979).

"Commerce" is defined as:

"The exchange of goods, productions, or property of any kind; the buying, selling, and exchanging of articles." Blacks at 244.

"Enterprise" is defined generally as:

"A venture or undertaking especially one involving financial commitment. . . ." Black's at 476.

Again, there is no implied for-profit requirement. See also K.S.A. 1991 Supp. 74-8103(e), as amended by L. 1992, ch. 221, § 3; K.S.A. 12-17,108 (repealed, L. 1992, ch. 202, § 15). In our opinion, the term commercial enterprise may be defined broadly to include non-profit corporations engaged in trade. See Daughters of St. Paul, Inc. v. Zoning Board of Appeals, 17 Conn. App. 53, 58 (1988); Clem v. Christole, Inc., 582 N.E.2d 780, 786 (Ind. 1991).

Very truly yours,



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RTS:JLM:jm