**Opinion Letter**

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| **Letter Number:** | **O-2000-044** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Telephone billings; state and local sales taxes.** |
| **Keywords:** |  |
| **Approval Date:** | **12/19/2000** |

**Body:**

Office of Policy & Research

December 19, 2000

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RE: Your e-mail inquiry

Dear XXXX:

I have been asked to answer your e-mail that we received earlier this month. In it, you indicate that you are programming sales tax collection software for telephone service providers. You ask how Kansas state and local sales taxes apply to telephone billings. You are especially concerned about how sales tax applies when rate changes do not coincide with customer billing cycles.

In Kansas, both intrastate and interstate telephone charges are subject to state sales tax. *K.S.A. 79-3603(b).* State sales tax applies to these charges regardless of whether they are billed to residential or commercial customers. This was not always the case. *See 1992 Kan. Sess. Laws Ch. 280, Sec. 60.*There are five specific exceptions that are set out in K.S.A. 79-3603(b), which do not generally apply to this discussion. In August, I wrote to you and explained how sales tax applies to some other billing charges, such as local telephone number portability charges, universal service charges, and federal subscriber line charges. *See Opinion Letter O-2000-012.*This advise continues to be current. The current state sales tax rate is 4.9%. *K.S.A. 79-3603.*

Local sales tax applies to the same transactions that are subject to state sales tax. *K.S.A. 12-191.*For telephone services, this means that local sales tax applies to interstate and intrastate charges for residential and commercial use. Local sales tax is due based on the “situs of the subscriber,” rather than on the situs of the provider. *K.S.A. 12-191. (“[R]etail sales involving the use or furnishing of telephone service or services taxed in subsection (k) or K.S.A. 79-3603, and amendments thereto, shall be considered to have been consummated at the situs of the e subscriber billed therefore.”)*

Local sales taxes are enacted by Kansas cities and counties. Currently, there are more than 230 local sales tax impositions in Kansas. These taxes are authorized by popular election. By statute, local sales tax impositions may become effective only on the first day of the first calendar quarter that follows the 30th day after a general or primary election, or the first day of the first calendar quarter that follows the 60th day after any other election. *K.S.A. 12-191.* Notice of the effective dates for new local sales tax impositions is published on the internet in the Information Network of Kansas. These notices may be accessed by using INK’s search engine to locate the term “sales tax rates.”

In Kansas, a sale of tangible personal property is generally viewed as occurring when the item being sold is delivered to the consumer. Services are viewed as occurring when performed. This means that when there is a rate change, the tax rate that should be applied to a long distance telephone call is the rate in effect on the date the call is made. Similarly, when there are two different local sales tax rates in place during one billing cycle, tax should be prorated for the period in question since the service period is being taxed at two different rates. For example, if a 1% local tax were in place for 15 days of a billing cycle for local service, and 2% for the remaining 16 days, tax should be figures base on 15 days at 1% and 16 days based on 2%.

I believe that this letter and my earlier letter to you will allow you to properly program the software in question. If you have any additional questions, please call me at (785) 296-3081.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

Enclosure

**Date Composed: 01/02/2001 Date Modified: 10/10/2001**