**Private Letter Ruling**

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| **Ruling Number:** | **P-1998-160** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Security monitoring equipment and monitoring fees.** |
| **Keywords:** |  |
| **Approval Date:** | **10/01/1998** |

**Body:**

Office of Policy & Research

October 1, 1998

XXXXX
XXXXX
XXXXX

RE: Your letter of August 10. 1998

Dear Ms. XXXX:

I have been asked to respond to your fax of August 10, 1998. In it you ask whether XXXXX should collect sales tax on its monthly charges for security monitoring services. On September 2, 1998 you supplemented your inquiry by providing me with a copy of one of your alarm monitoring contracts and a typical subscriber billing. During a telephone conversation, you indicated that XXXXX normally sells the security equipment to customers outright and contracts to provide security monitoring services. These services are billed on a monthly basis with sales tax being charged and collected on the service charges. You bill these charges as “Monitoring Service only.” XXXXX also installs the security equipment and provides monitoring services for a lump sum monthly charges. This service is billed as “Monitoring Service and Equipment.”

I will discuss the sales tax implications of these two services. The first involves monitoring services only. These services are not subject to Kansas sales tax. Kansas taxes services that are enumerated in K.S.A. 79-3603. Since security monitoring services are not enumerated in K.S.A. 79-3603, monitoring fees are not subject to Kansas sales tax. Thus, XXXXX should not be charging sales tax on billings to its subscribers for these services.

The second type of service involves a lump sum charge for the monitoring fee and for monitoring equipment that you install in the subscriber’s premises. This lump sum billing presents somewhat of a problem. In some ways, the billing charge appears to be for both the providing of a nontaxable service and the taxable lease of equipment. It also can be viewed as the providing of a nontaxable service with equipment being provided as necessary and integral part of the service.

To distinguish between an equipment lease and the providing of a service that involves the use of equipment, Kansas considers a number of factors, such whether the person who benefits from the use of the equipment operates or controls it or whether that operation and control is left in the hands of the equipment provider. In the case of XXXXX, subsections 1 and 9 of the contract reflect that ownership of the monitoring equipment remains with XXXXX. Operation of the system appears to be largely passive, other than turning it on and off. Under subsection 9, termination of the monitoring service results in termination of the equipment contract. This subsection allows XXXXX to enter the premises of the subscriber and remove the equipment upon the subscriber’s default. XXXXX agrees to provides maintenance and repair services to the equipment in Paragraph 7. XXXXX bills a single lump sum for the service and equipment. All of these factors weigh in favor of treating these contracts as providing the equipment as a part of XXXXX’s security monitoring service rather than as the lease of equipment for the subscriber’s use.

Other contract provisions suggest the equipment should be treated as equipment that is being leased rather than as being provided as part of the service. Under paragraph 11, the subscriber agrees to “operate and maintain” the security equipment. Paragraph 7 describes the monitoring equipment as “leased equipment.” XXXXX also provides its monitoring services to subscribers who use their own equipment. These tend to support viewing the contract one for nontaxable monitoring services and one for the taxable lease of equipment.

The question of whether XXXXX’s provides the equipment as part of its service or as a lease is a close one. Case law reflects that in Kansas, service providers are generally viewed as the consumer of all the equipment and other property that they purchase for use in providing the service. *Southwestern Bell Tel. Co. v. State Commissioner of Revenue*, 168 Kan. 227, 212 P.2d 363 (1949). The means that telephone companies historically were required to pay tax on telephones placed with subscribers and that cable television companies must pay tax on channel switching equipment that is placed with their subscriber homes and businesses. This rule that service provides are consumers applies regardless of whether the service is taxed or not taxed. See *In re Appeal of AT & T Technologies, Inc.*, 242 Kan. 554, 749 P.2d 1033 (1988).

Because of these cases and directives given to other security companies, XXXXX will be treated as providing the equipment as part of their service rather than as providing it as a separate rental or lease. The means they must pay sales tax on the cost of the equipment that it uses in providing its security services, and should not charge tax on its subscriber billings for the equipment that is provided with the service.

XXXXX can pay sales tax to its vendors when they buy the equipment, or, if XXXXX maintains an untaxed resale inventory for resale, accrue sales tax on their cost when they remove equipment from inventory to install at a subscriber’s residence or business under a “Monitoring Service and Equipment” contract. This tax can be factored into the subscriber charge for “Monitoring Service and Equipment,” which is not subject to sales tax.

Subsection 8 of the contract provides that XXXXX agrees to provide “all labor, parts and materials considered outside this agreement at a % discount off list price in effect at time of the service.” Any equipment sales provided under this provision would be fully taxable since it is not part of the monitoring service or equipment being provides for the service. XXXXX should continue to charge tax on the equipment that it sells and installs. Please note that installation services done to residential property are no longer subject to Kansas sales tax.

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 by operation of law without further department action if there is a change in the controlling statutes, administrative regulations, revenue rulings or case law that materially effects this determination. Please call me if you have any additional questions.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 11/04/1998 Date Modified: 10/10/2001**