**Private Letter Ruling**

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| **Ruling Number:** | **P-2015-004** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Mobile Point of Sale Device** |
| **Keywords:** |  |
| **Effective Date:** | **11/03/2015** |
| **Approval Date:** | **11/03/2015** |

**Body:**

November 3, 2015

XXXXXXXXXXXXXXXXX
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Dear XXXXXXXXX:

In your request for Written Opinion Letter for the sales and use tax for a Mobile Point of Sale Device (“Device”) your description of the use of the “Device” is order placement, order add-ons, checkout/payment, and customer satisfaction as well as to grant customers of the Company access to premium content, such as news, videos, sports, educational items, and interactive games, for a fee which is to be paid on their bill.

The Department deems such a device to be considered a coin-operated device for the purposes of Kansas sales and use tax. In accordance with this determination, Kan. Stat. Ann. §79-3603(f) requires the tax be paid upon the gross receipts from the operation of any coin-operated device dispensing or providing tangible personal property, amusement or other services except laundry services, whether automatic or manually operated.

Kan. Admin. Regs. 92-19-23a(b) to which you refer lists examples of what may deemed to be a “coin-operated device” and is not limited to those listed in the regulation. Furthermore, Kan. Admin. Regs. 92-19-23a(2) goes on to include “machines that dispense food, candy, drinks, or items of tangible personal property, including photocopies; that provide amusement and diversion; or that provide taxable services. Coin-operated devices that provide amusement and diversion shall include jukeboxes, pinball machines, pool tables, foosball tables, dart games, video games, and similar devices.” The “Device” provides access to news, videos, sports, educational items, and interactive games which would is a form of “amusement and diversion” to the customer.

There are no specified requirements on whether you pay before, during, or after to gain access to this content in order for it to be classified as a “coin-operated device.”

Therefore, the Department deems that the “Device” to be operated at XXXXXXXXXXXX is a “coin-operated device”.

The Company will be required to use the method provided by Kan. Stat. Regs. 92-19-23a(c) for the purposes of collecting the sales tax. The Company has the option to separately state the sales tax on each customer’s invoice and collect the specific tax amount. If the Company doesn’t itemize the sales tax, a statement must be made that the purchase is subject to all applicable state taxes.

The Company shall not deduct commissions or any other payment made to businesses upon whose premises the devices are located. Commission paid to the Vendor will not be taxed as taxes have been paid on the gross receipts of the devices.

With consideration to your question, “if the vendor is not registered to collect and remit tax, can the Company self-accrue use tax, it should first be noted that in K.S.A. 79-3608(a) it states: ". . . it shall be unlawful for any person to engage in the business of selling tangible personal property at retail or furnishing taxable services in this state without a registration certificate from the director of taxation." We therefore recommend that the vendor register with the state to do business in Kansas. With that in mind, the Company may self-accrue use tax until the time that the Vendor completes their registration.

In Kansas, a single premium content fee is charged for unlimited access to games stored on the “Device” and unlimited access to current news events and social media is taxable.

If you have any other specific concerns or questions, please do not hesitate to contact us.

This is a private letter ruling pursuant to Kansas Administrative Regulation 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 private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this ruling.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MdB

**Date Composed: 11/04/2015 Date Modified: 11/04/2015**