**Private Letter Ruling**

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| **Ruling Number:** | **P-1998-117** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **How sales tax is applied to security alarms and monitoring services.** |
| **Keywords:** |  |
| **Approval Date:** | **09/02/1998** |

**Body:**

Office of Policy & Research

September 2, 1998

XXXX
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XXXX

RE: Your letter of
December 15, 1997

Dear XXXX:

I have been asked to answer your letter of December 15, 1997. In it you ask how Kansas sales tax should be applied to the security alarm and monitoring business of XXXX.

XXXX is headquartered in California and has offices in several other states. It provides security systems and monitoring systems to commercial customers. XXXX plans to begin doing business in Kansas and wants to know what its responsibilities are under the Kansas sales tax law.

XXXX purchases complete security systems from third parties. The systems normally consist of a micro-processor based video, closed circuit television cameras, sensors, motion detectors, an alarm, control panel, keypad and wiring. The security system will be placed in a commercial business in Kansas and connected to a visual command center located in California where monitoring services are provided. An integrated voice communication system allows the command center to communicate interactively with the customer’s security system. XXXX employees at the California center will be able to adjust the cameras, and operate motorized gates, electric door locks, lights, and environmental controls at the customer site in Kansas.

XXXX and their customers will contract for these systems and services in two ways. Under the first, the customer will buy the system from XXXX outright and pay XXXX a periodic monitoring fee. Under the second, XXXX retains title to the system and the customer pays XXXX periodic fees under a service contract and for monitoring services. The service contract fee and the monitoring fee will be separately stated on customer billings. Service customers only obtain the right to use the equipment during the period in which they receive monitoring services from XXXX.

I will discuss the tax implications of these two contracts in order. The first contract involves the sale of tangible personal and the providing of a monitoring service by XXXX. Customer charges by XXXX for the sale of the system and equipment are subject to Kansas sales or use tax. Accordingly, XXXX must collect tax on the full customer charge for the sale. Whether Kansas state and local retailers’ sales tax or Kansas retailers’ use tax applies will depend on the nature of XXXX’s Kansas operations.

Kansas only 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, the periodic billing for the monitoring services would not be subject to Kansas sales or use tax.

The second contract involves charges for the equipment and charges for the monitoring fee. To distinguish between an equipment lease and the providing of a service that involves the use of equipment, Kansas considers 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 XXXX’s case, XXXX’s control and operation of the equipment from California, their duty to maintain the equipment, and the contractual limitation that the equipment can only be used in conjunction with XXXX’s monitoring services, are factors that weigh in favor of treating these security system contracts as part of XXXX’s security service rather than as a rental the equipment. This determination means that XXXX must pay tax on the cost of the equipment that it uses in Kansas and should not charge tax on its customer billing for the service fee.

As I discussed in another letter to you, 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). This general rule applies regardless of whether the service itself is taxed or is not taxed or whether tangible personal property is provided to the consumer for use as part of the service. See *In re Appeal of AT & T Technologies, Inc.*, 242 Kan. 554, 749 P.2d 1033 (1988). These rules dictate that when XXXX purchases property from Kansas vendors, it must pay sales tax on the purchase amount. When XXXX uses equipment in Kansas that was acquired in other state, Kansas use tax is due on the cost of the equipment. The amount of use tax due Kansas is subject to a credit for sales or use tax that was properly paid to another state. K.S.A. 79-3705.

In Kansas, the tax base for a security system that XXXX sells is the total selling price charged to the customer. The selling price includes shipping costs. The tax base for the security system that XXXX uses in providing its service is the cost of the system to XXXX. This cost should also include any shipping charges.

Installation services performed by XXXX are taxable when the services are for systems that are sold to customers. These same XXXX services should not be taxed when they are provided to customers who are not buying equipment. Such services are viewed as part of the non-taxable security monitoring service. However, XXXX would be responsible for paying tax on the installation services when it hires third party installers. Similarly, on repairs by XXXX to its own property, there would be no tax. However, repair services by third parties that are billed to XXXX are fully taxable.

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: 09/29/1998 Date Modified: 10/10/2001**