**Opinion Letter**

|  |  |
| --- | --- |
| **Letter Number:** | **O-2012-001** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales tax applicability to charges for "hosted software product" billed to Kansas physicians.** |
| **Keywords:** |  |
| **Approval Date:** | **02/06/2012** |

**Body:**

Office of Policy & Research

February 6, 2012

XXXX  
XXXX  
XXXX

RE: Your letter dated January 4, 2012

Dear XXXX:  
  
Thank you for your recent letter. You ask how Kansas sales tax applies to charges for “hosted software product” billed to Kansas physicians. You explain:

The software is located on servers outside [Kansas] and accessed by its customers via the Internet. There is no software downloaded or delivered to the customer; title and possession of the software never passes to the customer. Training services are provided to the customer either by the client’s personnel on site at the customer’s [Kansas] location or via web-based programming. Training is optional to the customer and there is a separate charge to the customer for training services.

One on-line definition of “hosted software” provides:

Hosted software is software that is installed, hosted and accessed entirely from a remote server or location. Hosted software is hosted and managed by the software manufacturer or a third-party vendor. Users can access it globally through the Internet. Hosted software is also known as software as a service (SaaS), a cloud computing service model. *www.techopedia.come/definitions/26635/hosted-software*

Terms that are related to “hosted software” include “software as a service” (SaaS) and “application service provider.” (ASP). For most practical purposes, these terms refer to the same contractual transaction, which obligates a service subscriber to pay a fee to gain Internet access to, and the use of, the service provider’s software and servers and to the data the subscriber inputs and stores on those servers. The same question usually is being posed whether KDOR is asked how sales tax applies to charges for SaaS software or hosted software or to an ASP’s charges to subscribers for its service.  
  
KDOR has published the answer to this question in Information Guide EDU-71R, *Revised Sales Tax Guidelines: Taxing Charges for Computer Products and Services and Internet Related Sales and Services,* (July 23, 2010):

**(e) Charges for using software on a remote computer.** A lease does not include obtaining remote access to someone else's computer software and equipment via the Internet or other electronic means when the customer does not have control over or have possessory rights to the software or equipment. This includes charges billed by an application service provider. (ASP). *Section IV(e).*

(i) **Remote servers located in Kansas.** When an in-state or out-of-state business leases or leases space on a remote server located in Kansas and buys prewritten software that is installed in the server, the software purchase is subject to Kansas sales or use tax. The charge to the in-state or out-of-state business for leasing or leasing space on the Kansas server is also subject to Kansas tax. Charges by an ASP for its services are not subject to sales tax. *Section IV(i)*

You ask KDOR to provide you with the “applicable statutory authority” that supports the position KDOR has taken for “hosted software.” That authority is found in K.S.A. 2010 Supp. 79-3603, which imposes retailers’ sales tax on charges for “rendering or furnishing any of the services taxable under this act,” and K.S.A. 2010 Supp. 79-3602(nn), which provides “’[s]ervice’ means those services described in and taxed under the provisions of K.S.A. 79-3603 and the amendments thereto.”  
  
None of the taxable services enumerated in K.S.A. 79-3603 can be construed as hosted software services, services provided by an ASP, or SaaS services. Accordingly, there is nothing in the sales tax imposition statutes that supports taxing charges for hosted software. Technically, the charges for hosted service aren’t “exempted” or “excepted” from sales tax because tax isn’t imposed on the service charges in the first place. Since tax has never been imposed on the services, tax payment and collection duties never exist. Since tax payment and collection duties never exist, there is nothing to carve out a tax exemption from or to draft an exemption for.  
  
Charges for hosted software services are not taxable as sales of “prewritten computer software” under K.S.A. 79-3603(s) because the software that is installed on a remote server isn’t delivered to subscribers or installed on their computers. The service provider has title and possession of the software. The department has ruled that any software that is delivered to a service subscriber that allows the subscriber access to the provider’s remote application software is part of the non-taxable service. Such software is not taxable as a sale of prewritten software so long as the software is not billed to subscriber as a separate line item charge.

Sincerely,  
  
  
Thomas E. Hatten  
Attorney/Policy & Research

**Date Composed: 02/07/2012 Date Modified: 02/07/2012**