**Private Letter Ruling**

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| **Ruling Number:** | **P-2000-008** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Internet and associated installation.** |
| **Keywords:** |  |
| **Approval Date:** | **02/29/2000** |

**Body:**

Office of Policy & Research

February 29, 2000

XXXXXXXXXXXXX
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Dear XXXXXXXXXXXXXXXXXXXX:

The purpose of this letter is to respond to your letter dated February 16, 2000. In it, you ask if Internet and associated installation are subject to Kansas retailers sales tax.

In your letter you stated:

XXXXXXXXX is a Competitive Local Exchange Carrier (CLEC) providing Broadband Internet access to business customers using Digital Subscriber Line (DSL) technology. The purpose of this letter is to request a ruling from your state concerning the taxability of the following three components of our customer billing:

Monthly Recurring Customer Charges [Internet Access]

Internet access charges are not subject to sales tax. Kansas sales tax law has never enumerated Internet access services as being a taxable service. Recent federal legislation prohibits any new state taxes on Internet access. However, telephone transmission related services that are billed to Internet service providers are subject to Kansas sales tax. See K.S.A. 79-3603(b). These services often include dedicated telephone numbers and connections that are paid for by the Internet provider rather than the Internet user. These telephone services link the internet user to the internet access providers' equipment and are subject to sales tax just like any other telephone service.

Labor Charges for 1-Installation of Customer Service

Labor Charges to install Internet service and related equipment is subject to sales tax, unless the service is exempted by statue. The Kansas retailers’ sales tax is imposed by K.S.A. 79-3603. Subsection (p) of the statute provides for the imposition of sales tax on:

(p) the gross receipts received for the service of installing or applying tangible personal property which when installed or applied is not being held for sale in the regular course of business, and whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate, except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building or facility, the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence or the construction, reconstruction, restoration, replacement or repair of a bridge or highway.
For the purposes of this subsection:
(1) “Original construction” shall mean the first or initial construction of a new building or facility. The term “original construction” shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;
(2) “building” shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;
(3) “facility” shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or of any municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility; and
(4) “residence” shall mean only those enclosures within which individuals customarily live;

Customer Equipment [lease]

K.S.A. 79-3603(h) imposes a sales tax upon: “the gross receipts from the service of renting or leasing of tangible personal property. . .”

K.A.R. 92-19-55(f) states in part: “Sales tax shall be imposed on the total amount of each lease payment which the lessee is obligated under the contract to pay to the lessor for continued use of the tangible personal property, with no deduction or exclusion from the lease price for insurance, taxes, service or maintenance contracts, handling charges, administration charges, late fees, repair or service charges, or any other charges regardless of how any contract, invoice or other evidence of the transaction is stated or computed and whether separately billed or segregated on the same bill.”

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 in the future by the operation of law without further department action if there is a change in the statutes, administrative regulations, case law, or published revenue ruling, that materially effects this private letter ruling.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC:mdc

**Date Composed: 03/21/2000 Date Modified: 06/01/2005**