**Private Letter Ruling**

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| **Ruling Number:** | **P-2009-006** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales of wireless communications devices (transponders) at grocery stores and pharmacies.** |
| **Keywords:** |  |
| **Approval Date:** | **08/03/2009** |

**Body:**

Office of Policy & Research

August 3, 2009

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RE: Your letter dated July 17, 2009

Dear XXXX:

Thank you for your recent letter. You represent the Kansas Turnpike Authority (KTA). The KTA will begin selling KTAG accounts in grocery stores and pharmacies. The KTA will provide a KTAG subscriber with a KTAG. You ask how Kansas sales tax applies to this transaction.

A KTAG is a transponder, which is a wireless communications device that picks up and automatically responds to an incoming signal. The term is a contraction of the words *trans*mitter and res*ponder*. When a motorist with a KTAG approaches a toll booth on the Kansas turnpike, the KTAG communicates with KTA's equipment which records the motorist's account number and other information. This allows the KTA to bill the appropriate tolls to the subscriber each month for its turnpike use. Use of a KTAG avoids the delays and traffic bottleneck caused by motorist who are required to stop and produce cash or credit to pay the toll. A KTAG's only use is to record information for a KTAG account.

The KTA provides KTAGs to motorists who secure a KTAG account. Title to the KTAG remains with the KTA, which has the right to require a motorist to return the KTAG or exchange the KTAG in its possession for another one. The KTA also charges a substantial fine if the KTAG is not relinquished when a KTAG account is closed.

In *In the Matter of the Appeal of AT & T Technologies, Inc*., 242 Kan. 554, 749 P.2d 1033 (1988), the Kansas Supreme Court rejected AT & T's contention that Southwestern Bell was reselling its handsets to its telephone service subscribers as part of its telephone services. The Court reaffirmed an earlier decision that a telephone company is the final user or consumer of equipment that it uses to provide its telephone services, including the handsets that are located in the subscriber's home or business. Because the telephone company is considered to be the final user or consumer of the handsets, the court ruled that Southwestern Bell was not "reselling" the handsets to its telephone service subscribers and therefore could not claim the resale exemption that is extended in the Kansas retailers' sales tax act. The court held that the telephone company was liable for sales tax when the company bought the handsets from the manufacturer and when it paid a third party to repair them.

Courts have applied this same logic to other items and transactions, including television converters that a cable-television company provides to its subscribers, bedding and towels that a hotel provides to its guests, and shoes and bowling balls that bowling alleys provide to bowlers. The Kansas Court of Appeals recently upheld the department's regulations that applied this logic to a Kansas health club that charged membership dues and provided towels and other items to its members. *In the Matter of the Appeals of Genesis Health Clubs*, Docket No. 99,772 (July 2, 2009)

This same logic applies to the KTAGs that are purchased by KTA and provided to KTAG subscribers. If sales tax is due on the KTAG, the tax is owed by the KTA when it buys KTAGs from the manufacturer. However, no sales tax is owed when the KTAGs are purchased because the KTA is a state agency. Kansas state agencies are exempt from paying sales tax on their direct purchases, provided the purchases are used exclusively for state purposes.

The Kansas Supreme Court has ruled: "The Kansas Turnpike Authority is an arm or agency of the State created by the legislature to perform an essential governmental function." *Rockers v. Kansas Turnpike Authority*, 268 Kan. 110, 991 P.2d 889 (1999); See e.g. *K.A.R. 39-1-1.* Retail sales to state agencies are considered to be direct sales to the State of Kansas and are exempted from sales tax by K.S.A. 79-3606(b). This exemption subsection provides, in parts relevant here:

The following shall be exempt from the tax imposed by this act: . . . (b) all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas . . . and used exclusively for state . . . purposes . . . .

Because the KTA is a Kansas agency and because direct sales to state agencies are exempt from sales tax, the KTA can claim exemption when it buys KTAGs and any related items such as batteries and signal-blocking containers from its suppliers. To claim exemption, the KTA is required to provide its vendor with a exempt entity exemption certificate. The exclusive use requirement for exemption is met because the KTA uses the KTAGs solely in the KTAG accounting system.

Toll charges for the use of the Kansas turnpike are not subject to Kansas sales tax. The Kansas sales tax act contain a broad imposition on the sale of goods but only taxes sales of a service if the service is identified in the act as being subject to tax. There is nothing in the sales tax act that imposes sales tax on toll fees charged for use of the Kansas turnpike. Therefore, the KTA should not charge sales tax on turnpike toll charges that are billed on a KTAG account. The KTA also should not charge sales tax on subscriber charges billed for a lost KTAG or for failing to return a KTAG after an account is closed.

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, or case law, or published revenue ruling, that materially effects this private letter ruling. If you have any additional questions, please call me at 785-296-3081.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 08/27/2009 Date Modified: 08/27/2009**