**Opinion Letter**

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| **Letter Number:** | **O-1999-028** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Converters purchased by a cable company.** |
| **Keywords:** |  |
| **Approval Date:** | **12/20/1999** |

**Body:**

Office of Policy & Research

December 20, 1999

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RE: Your e-mail received November 22, 1999

Dear XXXX:

I have been asked to respond to your e-mail that we received late last month. You are employed by a cable company and ask if converters purchased by the cable company are subject to sales tax. Your company places the converters in customer’s homes as part of its cable service. It charges customers for the use of the converters, and collects sales tax on those charges.

Please be advised that your company must pay sales tax when it buys the converters. Rather than being rented, the converters are provided to customers as part of the taxable service. Therefore, your company cannot claim exemption on the basis that it is buying the converter to resell by renting or leasing them to its customers.

The issue that you raise has been raised and litigated in cases in Kansas and several other states. In *Southwestern Bell Tel. Co. v. State Commission of Revenue and Taxation*, 168 Kan. 227, 212 P.2d 363 (1949), the Kansas Supreme Court considered and rejected Bell’s contention that its poles, transmission cable, switch boards, telephones and other equipment are exempt because Bell provides a taxable service. The court recognized that Bell was using items like the telephones to provide the telephone service and was not simply leasing them to their customer. In *In re Tax Appeal of AT & T Technologies, Inc.*, 242 Kan. 554, 749 P.2d 1033 (1988), the Kansas Supreme Court upheld the assessment of AT& T for sales tax they failed to collect on telephone repair services performed for Southwestern Bell. In this case, the court rejected Bell’s arguments that they were reselling the telephones by lease or rental. The court again found that Bell was providing the telephones to customers as part of their taxable telephone service. This meant that Bell’s purchase of telephones, and their purchase of repair services for those telephones, was subject to tax. In reaching its decision, the Court cited *Nashville Mobilephone, Co. v. Woods*, 655 S.W. 2d 934 (Tenn. 1983). In that case, the Tennessee Supreme Court cited a series of cases from other states and noted:

The general theme of all these cases is that when the primary function and purpose of the taxpayer is to provide services, the ownership, use and maintenance of certain type of personal property and equipment are necessary in order to enable to furnish the services so that the taxpayer, not the customer, is the ultimate user of consumer within the meaning of the sales tax use tax statutes.

Your cable company purchases converters to allow it to provide taxable television cable service to its customers. While converters are placed in the home of the subscriber, the cable company’s purchase of the converters is conceptually no different than its purchases of wire, satellite dishes, receivers, amplifiers, and other equipment that it buys to have the means to furnish taxable cable service. Like the telephones in Bell and AT & T, your company’s purchase and repair of converters is taxable since the converters are equipment used to provide the service.

I hope that I have adequately answered your question. If not, please call me to discuss this matter further.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 03/28/2000 Date Modified: 10/10/2001**