**Private Letter Ruling**

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| **Ruling Number:** | **P-2003-049** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Provision of on-hold message equipment to businesses.** |
| **Keywords:** |  |
| **Approval Date:** | **10/24/2003** |

**Body:**

Office of Policy & Research

October 24, 2003

XXXX
XXXX
XXXX

RE: You letter dated August 15, 2003

Dear XXXX:

Thank you for your recent letter. You have a client, XXXX, that provides on-hold message equipment to businesses in the Kansas City area. XXXX connects the equipment to a business's telephone system. When a client of the business telephones and is placed on hold, the equipment automatically plays a pre-recorded message. The message promotes the business's products or services. You ask how sales tax should be collected on these transactions.

The Kansas retailers sales tax act taxes sales and leases of equipment and other tangible personal property. It also taxes certain enumerated services. One of the services that is taxed is "telephone answering services, including mobile phone services, beeper services and other similar services . . . ." *2003 HB 2005, Sec.6(t).* Taxable answering services sometimes play advertising messages when a caller is placed on hold. Charges by an answering services for playing a pre-recorded advertising message would be taxable as part of the taxable gross receipts of the answering service.

Your client is not an "answering service," but installs equipment at a customer's business premises. The equipment automatically plays a prerecorded message when a telephone caller is place on hold. Unlike a message answering machine, the on-hold message equipment does not prompt and accept a message from the caller.

It is appropriate to tax this transaction as a lease of tangible personal property, just like a business's lease of other office equipment is taxable. Taxable office equipment leases would include the lease of a message answering machine, which typically both plays an outgoing message to the caller and records the caller's message. Taxable equipment would also include the more sophisticated systems that allows a message to be recorded if the recipient of a transferred telephone call is unavailable. The fact that the on-hold message equipment at issue here plays advertising does differentiate it from other leased telephone equipment for sales tax purposes.

You indicate that XXXX retains ownership of the equipment being placed. Please note that treating this transaction as a rental or lease allows XXXX to claim exemption on its purchase of the on-hold message equipment that it leases. It also exempts XXXX when it pays to have this equipment serviced.

I hope that I have adequately explained how sales tax applies to your client's business. If you wish to discuss this matter further, please call me at 785-296-3081. This is a private letter ruling pursuant to K.A.R. 92-19-59, based on the representations you have made. To the extent those representations are incomplete or inaccurate, this ruling is 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.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 10/28/2003 Date Modified: 10/28/2003**